EIRENARCHA:
or of
The Office of the Iuſtices of Peace, in two Bookes:

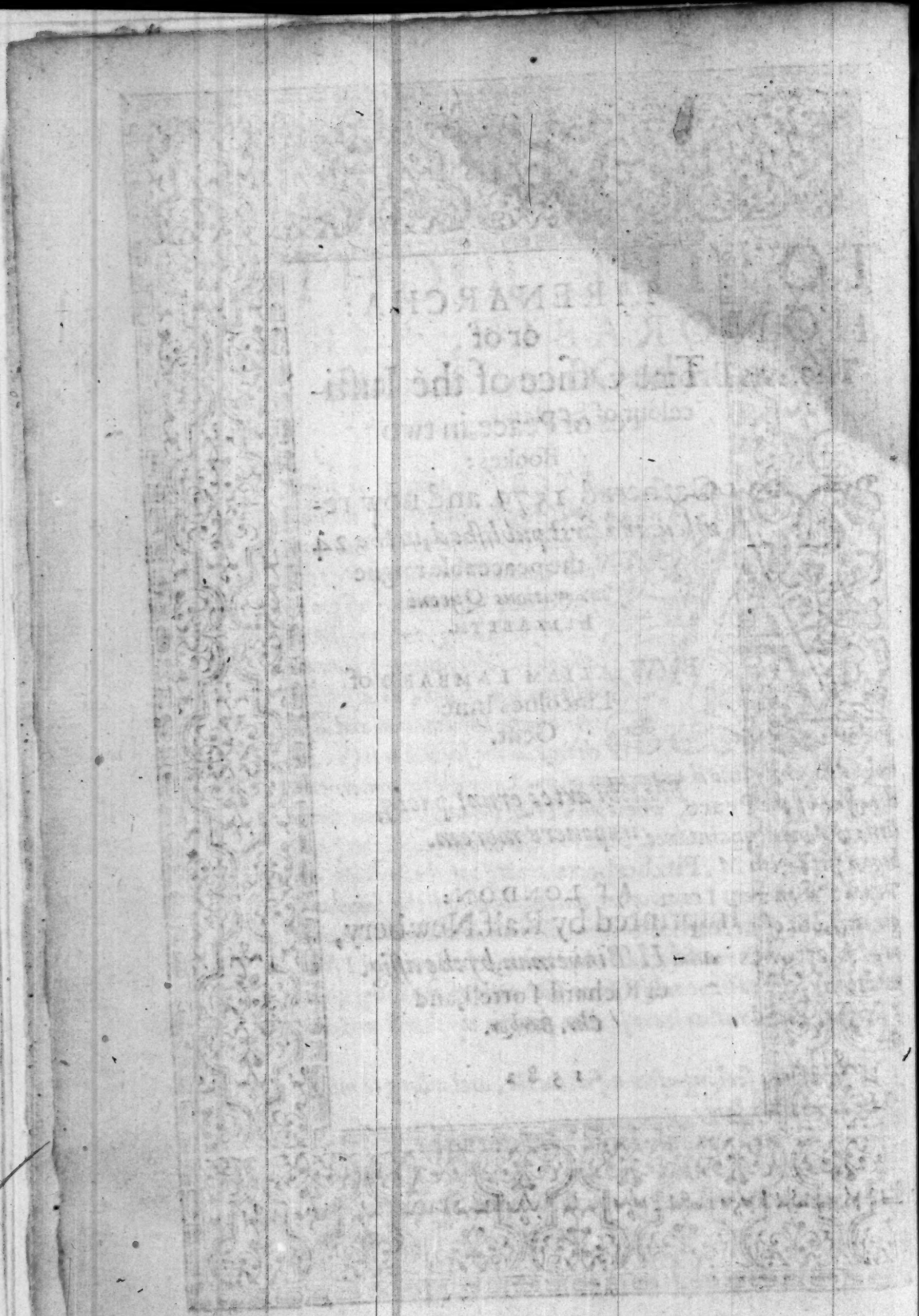
Gathered 1579. and now reuiſed, *and firſt publiſhed, in the* 24 yeere of the peaceable raigne *of our gratious Queene* ELIZABETH.

By WILLIAM LAMBARD of Lincolnes Inne Gent.

Hæ tibi artes erunt, paciq; imponere morem.

AT LONDON:
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1582



TO THE RIGHT HONORABLE, SYR Thomas Bromley, Knight, Lord Chancelour of England.

AFTER *such time as it liked you (Right honorable) to command my name to be put into the Commiſſion of the* Peace *for* Kent, *I thought it my part, aſwell for ſauing you (my ſpeciall good L. and fauorer) blameleſſe in the choice, as alſo for mine owne Information and diſcharge in the ſeruice it ſelfe, to looke diligently into that portion of our Lawe which concerneth the office of the* Peace, *wherewith I had before that time very little or none acquaintance. And therefore, in greedy appetite, I began firſt with M.* Fitzherberts *treatiſe of the Iuſtices of Peace: then went I to an other ancient booke, of the ſame argument, but of an* Author *vnknowen to me, and thirdly, I came to M.* Marrowes *reading. All which, when I had peruſed, I ſeemed to my ſelfe to haue taken ſome ſuch taſte of the thing that I ſought, as did rather incenſe than ſatisfie my thirſt and deſire.*

Wherefore, ſeeking after a full meale, and calling to mind that it was truly ſaid:

Gratiùs ex ipſo fonte bibuntur aquæ.

I betooke me to the olde and new bookes of the Common Lawes, *and to the volumes of the* Actes *and* Statutes, *and*

(mistrusting the slippernes of mine owne memorie) I did vpon a second reading plot the matter with my pen, and made (as it were) a Module thereof in a small booke, wherein I brought together stuffe of ech kind, sorted in heapes, and laied ready to be wrought and framed.

Howbeit, I did not then purpose to haue waded any deeper in this foord, as fearing that the water was higher than my head, and thinking it sufficient for mine owne priuat vse, to haue some seruiceable furniture ready at hand, though otherwise neither much orderly digested nor painfully penned.

But, when as (through daily occasion to vse that booke abroad) I had imparted it with other men, I was perswaded by sundry godly, wise, and not vnlearned gentlemen, my friends, that the more part of the Iustices of the Peace, at this day had neede of some helpe in writing, for their better conduct in that office, and that it might increase the knowledge of many of them, and consequently do a common good, to haue the booke made common by impression.

Then againe, I tooke the booke into my hands, and ripping (stitch by stitch) my former doing, I inlarged the worke, granting vnto it more breath and roome of speech: I planted Precedents here and there in it: I gaue it some light of Order and Method: and added withall some delight of historie and record. Finally, framing it altogether to common conceipt and practise, I prouided (as I might) both for profite and pleasure, and fraught and laded it with the best ware of counsell and aduise that I had of mine owne, or could borrow of my friends, determining so to send it from the Cape of good Hope, and to aduenture it to the Seas and winds of the iudgements and reaports of other men.

The same now (my singular good L.) though neither answerable to your worthines, nor to mine owne wish, I am bold to present vnto you, being thereunto carried by these respects.

First, trusting that you, which do go before them all (in the perfect knowledge of our Lawe) that haue gone before you in that honorable place which you now hold, will according to the Rule of lawe (in your owne hands) rectifie the Commission

of

of the Peace, and some other crookednes, whereof this booke shall bring complaint before you.

Secondly, assuring my selfe, that if you shall not condemne or Cancell *it, but shall allow it, and seale (as it were) the Writ* De pace *for it, then both I shall find the better comfort and defence, and the booke it selfe shall haue the more curteous entertainment, and freer passage with other men.*

Lastly, wishing that it may remaine a perpetuall Monument *of the* Sacrifice *of mine owne thankefulnes for those your rare and long continued fauors, from time to time (euen vndeseruedly) bestowed and cast vpon me.*

Vouchsafe therefore, I pray you (my very good L.*) this slender gift, at the hand and from the hart of him, who (if he had equall mixture of might, to his mind) would giue you that which should be proportionable to the setting foorth of your honor, and the acquitall of his owne dutie and deuotion towards you.*

The Lord *of* Lords *blesse you (for his* Christs *sake) with the spirite of godly and courageous wisedome, and make you a long and happy Counsellor of this* Estate, *to the furtherance of his holy Gospell, the weale of the* English *nation, the true seruice of the* Queenes Maiestie, *and your owne honorable and long lasting memorie,* Amen.

From Lincolnes Inne, *this* 27. *day of* Ianuarie. 1581.

Your H. most humble, and readie
to be commanded in the Lord,
WILLIAM LAMBARD.

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The end of the Table.

EIRENARCHA:

Or, of the Office of the Iustices of Peace.

THE PROHEME.

TO write of the Office and Dutie of Iustices of the Peace, after M. Marrow (whose learned Reading in that behalf: made in the xviij. yeare of King Henrie the seuenth, is in many hands to be seene) and after Iustice Fitzherbert (who published an excellent treatise therof, which is yet euerie where to be had) may at the first seeme no lesse vnaquisedly done, than if a man should bring Owles to *Athens* (as the Prouerbe is,) or sticks into a growing Wood or Copise. Howbeit, if it be considered, that since their time, thys Office is charged with many Statutes, whiche were not made when their Writings

were penned: and if it be weighed also, that sundrie things in them had then the force of Law, which now at this day they haue lost by alteration of like auctoritie: It can not bee thought altogither in vaine, to conferre their writings with the Booke cases, and Statutes that haue arisen of latter times, and out of them all to collect some discourse, that may serue for the present age, wherein wee now liue, and somwhat further the good endeuour of such as be not trained vppe in the studie of the lawes. In whiche doing, as I meane to robbe no man of his right, but to yeld to ech one the due praise of his owne, fearing, least (as the Poet said)

Moueat Cornicula risum,
Furtiuis nudata coloribus;

So if I my self shal be found here and there to dissent in opinion from other men, I desire heartilie, that my good meaning bee not euil interpreted, that my allegations and reasõs be weighed indifferently, and that the respecte of my person bring no preiudice to the thyng in question.

What Iustices *of the* Peace *bee: and why called* Iustices.

CAP. 1.

IVSTICES of the Peace, bée Iudges of Record appointed by the Quéene to bée Iustices within certain limites for the Conseruatiõ of the Peace, and for the execution of sundrie things comprehẽded in their Cõmission, and in diuers lawes committed vnto them.

A definition (or discription of *Iustices* of the Peace.

These, and many other Iudiciall officers in our Law, be called Iustices (*per metonymiam subiecti*) because they doe (or shoulde doe) lawe and Iustice. For in many olde Histories, the Chiefe Iustice of *England* is termed, *Capualis Iustitia*, and *Prima* (*post Regem*) *in Anglia, Iustitia*: and the Originall Writtes that are in M. Glanuils Booke (whiche was written vnder the raigne of king Henry the second) haue this forme, *quod sit corã me, vel Iustitijs meis*: And this (no doubt) was done of speciall purpose, and to the ende, that the mention of their name, should put them in mind of their office, and should continually

Why they bee called *Iustices*.

(as it were) sollicit thē to administer Iustice, for whose sake they were appointed. But in the dates of King Henrie the third, M. Bract. (who reduced the body of our lawe into latine, and therein imitated the Methode of the Ciuile Lawiers) chaunged the worde *Iusticies* into *Iusticiarijs*, (how Latine like, let them iudge that can skil) & setteth down the Writtes accordingly, *corā Iusticiarijs nostris*. Since which time, not only al our Writtes that commaund appearance before the Iustices at *Westminster*, do vse the word *Iusticiarijs*, but all Commissions of Sewers of the Peace of Oyer and Terminer, and such like, do obserue the same forme also.

And of this it commeth, that M. Fitzh. (in his treatise of the Iustices of Peace) calleth them Iusticers (contractly for Iusticiars) and not Iustices, as we commonly (and not altogither vnproperly) do name them.

Of the signification of the worde *Peace*.

CAP. II.

Peace, hath many significations.

IF the Latine worde *Pax*, the Normans framed their *Paix*, and we out of that, our Peace: which name hath sundry significa-

nifications in the holy Scripture: For there is an inwarde, and an outward Peace. And this inward Peace, is either good, or euill: First thē, there is *pax apud Deum*, that is to say, our reconciliation made with God the father, by the death of Christ his sonne, who is *pax nostra*, and hath appeased the wrath of God for our sinnes.

Out of this procéedeth an other inwarde Peace, named ỹ Peace of Conscience, for that our conscięce is (by faith in Christ) at Peace, both with God and it self. The euil inward Peace, is the same whereof our Sauiour Christ spake, saying: *Pacem do vobis, non quemadmodum mundus dat*: And this Peace, the kingly Prophet Dauid calleth *Pacem peccatorum*, because it is no better than carnall securitie.

The outward Peace hath respect to other men, and that is of two sortes also: the one is opposed (or set) against all maner of striuing and contention, whether it be in countenaunce, gesture, worde, or worke: of the which S. Paule spake to the Romans in these words: *Si fieri potest, quantum in vobis est, cum omnibus hominibus pacem habetote*: And in the same meaning, the Latine mē say, *Pace tua*, by your leaue or fauour, without your offence, or displeasure. The other is one

lie an abstinence from actual force, & offer of violence, and is rather cõtrarie to *arma, prælium*, and *bellum*, (which can not be without force, or armes) thã it is to *lis, pugna*, or *certamen*, which (as Laurence Valla confesseth) may bee *nudis verbis, & cura arma*. And hereof also our Sauiour Christe spake, when he said, *Non veni vt mitterem pacem, sed gladium.*

Peace in our law.

The lawe of our Realme likewise vseth the word Peace diuersely, but yet so, as it is altogither occupied aboute these outwarde Peaces. For, as Cicero said of fraudes, *aliter leges, aliter Philosophi, tollunt astutias: leges quatenus manu tenere res possunt, Philosophi quatenus ratione & intelligentia*: euen so maye I trulie affirme, that (in the matter of Peace) ỹ Law of God (which only is the true Philosophie) respecteth the minde & conscience, although the lawes of men doe loke but to the bodie, hands and weapons.

Sometimes therefore, the word Peace is taken for Protection, or defence: as where M. Bracton calleth the Writtes of Protection, *Breuia de pace*. Sometimes (as it seemeth to mee) it is taken for Rights, Priuiledges, and Liberties, as in the oath of the Quæne at hir Coronatiõ, she sweareth, *Seruare Ecclesiæ Dei, Cleri, & populi, pacem ex integro*. the meaning whereof is, (as I suppose) that she will

will maintaine eche degrée and eſtate of hir Subiects, as well Eccleſiaſticall as Tempozall (foz *Populus* compzehendeth all the Laitie) accozding to their ſeueral cuſtomes, Lawes, and Pziuiledges. And ſometimes it is taken foz a withholding (oz abſtinẽce) from that iniurious fozce & violence, wherof I ſpake befoze. And this is it that is moſt commonly vnderſtood by the wozd Peace, in our Lawe: and foz the maintenance hereof chiefly, were theſe Wardeins and Iuſtices of the Peace firſt made and appointed.

Peace, for *Iuſtices* of the *Peace*.

Foz Iuſtices of the Peace were not ozdained (as ſome haue thought) to the end to reduce the people to an vniuerſall vnanimitie (oz agrément of minds) which is indéd a thing rather to be wiſhed foz, than to bée hoped after: Neither is it any part of their office, to fozbidde lawful ſuites and controuerſies (whiche neuertheleſſe bée diſagrémentes of mindes) but to ſuppzeſſe iniurious fozce and violence, moued againſte the perſon, his gwds, oz poſſeſſions.

And that this may appéere to be ỹ mind of that king, which firſt created theſe Wardẽs, oz Iuſtices of the Peace, (I meane King Ed. the third) let me ſhew you the verie Writte that hée in the firſte yeare of his raigne, and noi manie wéekes befoze the Parliamente,

in which the Gardeins of the Peace (who afterwarde obtained the name of Iustices of ỹ Peace) were first ordained, did send to ỹ Shirifes of al the Shires in *England*, bearing this forme. EDWARDVS *Dei gratia Rex Anlia, Domi. Hybernia, Dux Aquitaniæ, Vicecomiti Kanc. ſalutem. Quia Dom. Edwardus nuper Rex Angl. pater noſter, de communi aſſenſu prælatorum, Comitum, Baronum, & aliorum Magnatum, necnon Communitatum totius regni prædicti, ſpontanea voluntate ſe amouit à regimine dicti regni, volens & concedens quòd nos (tanquam ipſius primogenitus, & Hæres ipſius) regni gubernationem & regimen aſſumamus: Noſque ipſius patris beneplacito in hac parte de conſilio & auiſamento Prælatorum, Comitum, & Baronũ prædictorum annuentes, gubernacula ſuſcepimus dicti regni, & fidelitates & homagia ipſorũ Prælatorum & Magnatum recepimus, vt eſt moris: Deſiderantes igitur pacem noſtrã pro quiete & tranquilitate populi noſtri inuiolabiliter obſeruari, Tibi præcipimus, quòd ſtatim viſis præſentibus per totam Balliuam tuam Pacem noſtram facias publicè proclamari, vniuerſis & ſingulis ex parte noſtra inhibendo, ſub pœna & periculo exhæredationis & amiſſionis vitæ & membrorum, ne quis dictam Pacem noſtrã refringere ſeu violare præſumat, ſed quilibet actiones & querelas abſque violentia quacunque proſequatur, ſecũdùm leges*

Tho. Walſingham in hiſt. pag. 107.

&

& consuetudines regni nostri : Nos enim parati sumus, & semper erimus, omnib. & singulis conquerentib. tam diuitib. q̄ pauperibus in Curijs nostris plenam iustitiam exhibere. Teste meipso Cal. Feb. die dominica, in vigilia Purificat. &c.

This Writ I haue the rather chosen to set down at large, because it containeth a faire shew of a foule shift, I mean, his attaining to ỹ crown, by the depriuation of his father.

But (for ỹ present purpose) by this Writ it is manifestly declared that ỹ Peace which he meant, was not an uniting of minds but a restraining of hãds, which is (in a maner) al one with that which Tully writeth in his Oration *Pro Sestio*, where he setteth *Vis* & *Ius* one against the other: and it agreath wel with that description of *Vis* whiche M. Bracton maketh (*lib.* 4. *ca.* 4.) saying: *Vis est quotiens quis (quod sibi deberi putat) nõ per Iudicem repoſcit : Est autem interdum armata, interdum inermis.* According to which meaning also, the old Statute of *Westminster* the first (ca. 1.) said: Let the peace of the land bee maintained in al points, & common right be done to all, as wel poore as rich: Thereupon likewise saith the Statute (1. R. 2. cap. 2.) Let the peace be wel & surely kept, that the Kyngs subiectes maye safely goe, come, and abyde, according to the Law of the Realme, & that

Iuſtice and right be indifferētly miniſtred to euery Subiect.

Finally, the Statutes of 2.R.2 ca.4. 1.H.4.c. 1. and 7.H.4.ca.1 Doe all (in plaine ſpeeche) couple the maintenance of the Peace, with the purſuing of ſuites. as things that maye right well ſtande togither. And therefore, I conclude, that this furious geſture, & beaſtly force of bodie, or handes (and not euerie contention, ſuite, & diſagreement of minds) is the proper ſubiecte and matter, aboute which the Office of the Iuſtices of the Peace is to be exerciſed.

Inſticer of the *Peace*, be meet to pacifie ſuits.

Howbeit I write not this, as thoughe I woulde not haue a Iuſtice of the Peace to occupie himſelfe alſo in pacifying the ſuites and controuerſies, that do ariſe amongſt his neighbours: Yea rather I wiſh him to bee as well εἰρηνοποιὸν, as εἰρηναρχῶ, a Compounder, as a Commiſsioner of the Peace, & I think him ſo much the māter to ſteppe in betwixt thoſe that be at variāce, as (by reaſon of his learning, wiſedom, auctoritie, and wealth) he is like to preuaile more, by his mediation and intreatie, than an other man. But, as it is not all one, to ſpeake of his proper office in Lawe, and of his common dutie in Charitie: ſo I thought good to ſeuer and diſtinguiſh them.

Of

Of such as had the *Conser-* *uation* of the Peace, at the Common Lawe.

CAP. III.

AS the common Lawe hathe, euen from the beginning, cõtinued a speciall care for the Conseruation of this Peace: So did it not want meet Officers, (before that these Wardeins or Iustices of the Peace were made) to whose charge it did committe the mainteinance of the same: And for as much as it will giue no small light to the vnderstanding of the office of the present Iustices of Peace, to haue that auntient auctoritie vnfolded, vppon the whyche thys latter power is (as it were vppon a Stocke) set and engrafted, I will speake somewhat thereof, before I beginne with the other

At the Commune lawe therefore, and before the tyme of K. Edward the third, there were sundry persons, that hadde interest in the keeping of the Peace. Of these, some had that charge as incidente to other Offices, which they did beare, & so included wythin the Conseruators.

the same, that they were neuertheleſſe called by the names of their other Offices only: Some others had it ſimply, as of it ſelfe, and were thereof named *Cuſtodes pacis*, Wardens, or Conſeruators of the Peace.

By other offices.

Againe, of theſe that had charge ouer the Peace, by the dignitie of their Offices, ſome had that power ouer al the Realme, & ſome others had it within certaine limits only: & both theſe ſorts after a diuers maner of diſpenſatiõ, as in particularity it ſhal appéere.

The Queenes Maieſtie then is, by hir Office and dignity royal, the principal Conſeruator of the Peace within hir dominions, and may giue auctoritie to others, to ſée the Peace kept, & to puniſhe ſuch as ſhall breake the ſame. But a Duke, Earle, or Baron, be no Cõſeruators of the Peace, becauſe thoſe bée no titles of Office, but of dignitie only, ſaith Marr.

The Lord Chauncelour or Lord Keeper of the great Seale, the L. Steward of *England*, the L. Marſhall and Coneſtable of *Englande*, and euerie Iuſtice of the Kings Bench, haue (cloſed in their offices) a credite for conſeruation of the Peace ouer al the realme, and may awarde Preceptes, and take Recognuſance for the Peace. Marr. & Fit. And by good opinion, The L. Treaſorer of *Englande* may well

wel bée added to the same number.

The Maister of the Rolles also by ỹ iudgement of M. Mar. is a generall Conseruator of the Peace by his office. But he maketh proceſſe, & taketh Recognusances therupon, not as incident to his office, but by prescriptiõ.

The Iustices of the Common place, and Barons of the Escheaquer, be Conseruators within speciall places onelie, that is to say, within ỹ precincts of their seueral Courts: So also the Iustices of Assise may awarde a man to prison, that breaketh the Peace in their presence, and they maye commaunde the kéeping of the Peace vnder a paine, and that weapons bée taken from the Iurors or Witnesses that appeare before them, if any complainte bée therevppon made: But as they bée mérely Iustices of Assise, they can neither take Suertie of the Peace, nor awarde any Proceſſe for it, Marr.

The Iustices of Gaole deliuerie, may take suertie for the Peace of a prisoner béefore them, that was committed for not finding suertie of the Peace, Mar.

The Coroners (sayth Britton. Fol. 3.) bée principal Conseruators of the Peace within their Counties: And euerie Shirife is a Conseruator of ỹ Peace within his County: as Iudge Fineux affirmed 12. H. 7. 17 and after

after him M.Fitzh. in *Nat.Bre.Fol.*81. where he saith that the Shirife may (vppon request made, and without any Writte sente vnto him) commaund a man to find such Suertie of the Peace by Recognusance.

The Stewarde of the Marshalsey, maye take Suertie of the Peace, by Recognusãce also wythin the Vierge by prescription: and the Conestable Marshall of the Quéenes house, may sée to the Conseruation of the Peace within the same house, Mar.

The Stewarde of the Shirifes Turne, the Steward in a Leete, or the Stewarde in a Court of Pipowders can not graunt Suertie of the Peace, vnlesse it be by Prescription. But euerie of them, may committe hym to Warde, that shall make an affray in theyr presence, whilest they bée in execution of their Offices, which is more than the Steward and Suitors in a Court Barõ can do Mar. but the first two of these, may also take presentmẽt of any offence against ẏ Peace.

To be short, euerie Constable, Peticonstable, Tithingman, & Borowhead, be Conseruatours of the Peace by their Offices, within ẏ limits of their Hundreds, Townes, Tithings, and Boroughes, 12.H.7.17. Fineux. And by the same reason, our Borsholder in *Kent*, and their Thirdborowe in *Warwickeshire*,

shire, bée Conseruatours also within theyr Boroughes. For Borowhead, Borsholder, & Tithingman, bée three seuerall names of one selfesame thing, and do signifie, The chiefe mã of the free pledges within that Borow, or Tithing And where each third Borowe only hath a Constable, there the Officers of the other two Borowes, be called Third-borowes.

These Constables were ordained (as it appeareth 3.H.4.9:& 10.H.4.& Fit. Fo. 172.) to kéepe the Peace, and to represse felons, and might take suertie of the Peace (by obligation) if they found any man making an affray, or otherwise to commit hym to prison till hée should find such Suertie.

I haue read also, that a Constable might at the common law, haue bayled a suspect of felonie by Obligation, because hée was a Conseruator of the Peace: and that both hée and the Shirife lost this authoritie by the Statutes, (3.H.7.ca.3:& 1 & 2.Phil. & Mar.ca. 13.) The which in giuing that power to Iustices of the Peace, do (in ỹ opinion of some men) take it from the Shirife & Constable: reported by Dalizon Iustice.

Hitherto thẽ, of such as had, and yet haue, the charge of the Peace cõueyed vnder their other Offices. Now as touching those that had

Simple Conseruators.

had the ſimple Office of Wardeins (or Conſeruatours) of the Peace, it is to bée vnderſtode, that they alſo were of two diuers ſortes: that is to ſay, eyther Ordinarie, or Extraordinarie: and the Ordinarie Conſeruators, were eyther by Preſcription, Election, or Tenure.

Ordinarie.

By preſcriptiõ.

A man may preſcribe (ſaith M. Mar.) that he and his auncеſtors, or he and they whoſe eſtate he hath in the Manor of *Dale*, haue béene Conſeruatours wythin the Hundred of *Sale*, either all the yeare, or onelie at one certaine time of the yeare: And as hée may preſcribe in the power it ſelfe, ſo alſo maye he in the maner of the exerciſe of the ſame, as that he and they haue vſed to take Suertie of Peace by obligation, pledge, or Caution, & ſo alſo in the manner of the Proceſſe therefore, as to Diſtreigne, and to ſell the diſtreſſe, Marr.

But all this is to bée doubted of, becauſe that in the opinion of Brian and Pigot (21. E. 4. 67: & 21. Ed. 4. 35.) the Maior of *Dale* cannot preſcribe to be a Conſeruatour, or to commaunde Suertie of the Peace, and to commit to priſon for an affraye in his preſence, vntill ſuch ſuertie be found.

Furthermore, euen as the Shirifes, were auntientlye choſen, and as the Coroners yet

yet bée. So also certain persons were wont to bée elected Conseruatours of the Peace, in the full Countie before the Shirife : and of this kinde I my selfe haue séene certaine Recordes (*in Rotul: patent. de Anno* 5. Ed. 1.) running in this course. By Election.

First, a Writ to the Shirife of *Norffolke*, commaunding hym to chose in hys full Countie, *vnum hominem de probioribus & potentioribus Commitatus sui, in custodem pacis.*

Then an other Writte directed, *Ballluis & fidelibus* of the same County, giuing vnto them notice of the former Writ to the ende (as it séemeth) that the Bailies should warn the men of the Countie, & that they should appeare at the Countie Court, to make the Election.

And lastlye, to the Conseruatour elected, this Writ following:

EDVVARDVS *dei gratia Rex Angliæ, Dominus Hyberniæ, & dux Aquitaniæ, dilecto & fideli suo Iohanni le Bretun, Salutem : Cùm Vicecomes noster Norffolc. & communitas eiusdem commitatus elegerit vos in Custodem pacis nostræ ibidē: vobis mandamus, quod ad hoc diligenter intendatis, prout idem Vicecomes vobis scirifaciet ex parte nostra, donec aliud inde præcepermus. In cuius rei, &c. Datum per manum venerabilis patris. F. Bathon & Wellen. Episcopi,*

Cancellarij nostri, apud Cest. secundo die Sept. Anno regni nostri quinto.

By Tenure. Touching the Conseruation of the Peace by Tenure of Land: M. Marrow putteth this case: If the King graunt vnto a man landes to holde of him by Knightes seruice, and to be a Conseruator of the Peace in a Countie, he is a Conseruatour by Tenure: agreeably wherevnto saieth an Inquisition founde at *Chester* (An. 4. E. 2.) after the death of one Vrianus de Sancto Petro (*inter alia*) thus:

Quòd idem Vrianus tenuit de Domino Rege in capite in dominico suo vt de feodo die quo obyt, Mediet atem Seriantiæ pacis, per seruitium inueniendi, decem seruientes pacis ad Custodiam pacis in Cestr. pro qua quidem custodia antecessores sui percipere solebant xxx ℔. per annum ad Scaccarium Cestr. pro Mantellis dictorum decẽ seruientum, &c.

Extraordinarie Conseruators. These sortes, and some others (whiche M. Marrow reciteth, and which I, wanting Records to warrant them, do omitte) I call Ordinarie Conseruatours of the Peace, because their auctoritie was then Ordinarie, alwayes one, and the same well ynoughe knowen: But the Extraordinarie Conseruatour, as hée was indowed wyth an higher power, so was hée not ordinarily appointed, but in the times of great troubles onelie,

onelie, much like as the Lieuetenauntes of Shires are nowe in our dayes.

And he had the charge to defend the coasts and Countrey, bothe from forraine and inwarde enimies, and might commaund the Rhirife and all the Shire, to ayde and assiste hym, as it may well appeare by this Patent (remayning of Recorde in the Tower, *Rotul. Patent. de Anno* 49. Hen. 3.) made by that King, or rather in his name, by Simon the Earle of *Leicester*, whose prisoner hée then was.

REX Iohanni de Plesset, salutem: Cùm nuper de consilio Magnatum qui sunt de cõsilio nostro, constituerimus vos custodem pacis nostræ in cõmitat. Northumb. ac vos tam laudabiliter & circumspectè in officio illo gesseritis, quod probitatem ac diligentiam vestram meritò duximus recommendandam, & adhuc necesse sit (sicut intelleximus) quod ad tuitionem partium illarum & conseruationem pacis nostræ, eidem officio intendatis: vobis (de consilio Magnatum prædictorum mandamus, firmiter iniungentes, quatenus omnem diligentiam (quam poteritis) adhibeatis ad pacem nostram conseruandam in partibus prædictis, in forma qua vobis aliàs iniunximus. Mandauimus enim Vic: nostro Northumb. quod quotiens opus fuerit) & à vobis fuerit requisitus, cum toto posse sui commitatus: vo-

Quo minus.

bis ad hoc assistat. Nolumus autē, quod prætextu huius mandati nostri, de aliquibus (quæ ad officiū vic: pertinēt) vos intromittatis, quo minus vic: de exitibus eiusdem commit: nobis plenè respondere valeat ad Scaccarium nostrum. Teste Rege, apud Westmonast. xj. die Februarij, Anno regni sui quadragesimo nono.

And sundry the like Patents were at the same time also made: as to Iohn de la Hay, to bee Conseruatour of *Kent*, and of the Sea coastes there: to Ralphe Basset of *Drayton*, to bee Conseruatour of *Staffordshire*, and so to others for other Counties.

Of the firste ordaining of the *Wardeins* and *Iustices* of the *Peace*, by Statute Law.

CAP. IIII.

After suche tyme as Queene Isabell, contēding wyth hir husbande King Edward the seconde, was returned ouer the seas into *England*, accompanyed with hir son Prince Edward (called afterward the thirde King of that name) & with Sir Roger Mortymer

tymer, and such others of the English Nobilitie, as had for the indignation of the King, fled ouer the Seas vnto hir: She some after gotte into hir handes the person of the olde King, partly, by the assistaunce of the Henalders, that she brought wyth hir, and partly by the aide of such other hir friendes, as she founde ready here, & she immediately caused hym by forced patience to surrender hys Crowne to the yong Prince. And then also, for as muche as it was (not withoute cause) feared, that some attempt would bee made to rescue the imprisoned King, order was taken, that hee should bee conueyed (secreatelye, and by nightwatches) from house to house, and from Castle to Castle, to the end, that his fauourers should bee ignorant what was become of him. Yea, and then withall, it was ordained by Parliament, in the life tyme of that deposed King, & in the very first entrie of his sonnes raigne (1 E.3. ca.15.) That in euerie Shire of the Realme, good men and lawfull (whiche were no mainteiners of euill, nor Barettours, in the Countrie) should bee assigned, to keepe the Peace: which was as much as to say, that in euerie Shire the King himselfe should place speciall eyes and watches ouer the common people, that shoulde be bothe willing & wise

to foreſée, and bée alſo enabled with méete auctoritie to repreſſe al intentiō of uproare and force, and that euen in the firſte ſéede thereof, and before that it ſhoulde growe vp to anye offer of daunger. So that for this cauſe (as I thinke) the election of the ſimple Conſeruators (or Wardeins) of ỹ Peace, was firſte taken from the people, and tranſlated to the Aſsignement of the King.

And whether their auctoritie and power were then alſo wyth this alteration anye thing increaſed, or no, I will not affirme: But I finde (3.E.3. *tit. Coron.* Fitzh.360.) that an Enditement of murder was founde béefore one Wardein of the Peace onelye, and that he thereuppon wrote his Letter (or precept) to the Shirife, to apprehende the perſon endited, who toke and brought him before the Iuſtices in Eire, and that they alſo thereuppon proceéded to the arraignement and triall of him.

And the Statute (4.E.3.cap.2.) taketh order, that ſuch as ſhould be indited, or taken by ỹ Wardeins of the Peace, ſhoulde not bé bayled by the Shirife or other Miniſters, vnleſſe they were Mainpernable by the Law.

Commiſsions, or aſsigneméts, for the Peace.

Howſoeuer that were, the ſame King vſed (as I think) for ỹ firſt 33. yeres of his raign, to make his aſsignments and commiſsions

to

to the Wardeins of the Peace, not alwayes seuerally into eache Shire, but sometimes iointly to sundry persõs ouer sundry Shires: for so I finde a Commission (2.E.3.*part.*2.*patent in dorso*) made to William Roos and three others his companions to be Wardens of the Peace, not onelie in *Lincolnshire*, but also in three or foure of the other Counties thereunto next adioyning.

This though it might seeme to be warrãted (after 18.E.3.) vppon the Construction of the word Countie vsed Plurally in the Statute 18.E.3.Stat.2.ca.2. yet was it much contrary to the meaning of the former Lawes (made 1.E.3.ca.15:& 4.E.3.cap.2.) where the same word is read (Euerie Coũtie) in ỹ singular number: And therefore the Parliamẽt (34.Ed.3 cap.1.) restored the proper sense of those Lawes, saying: In euerie Countie of *England* there shall bee assigned for the safe keeping of the Peace, one Lorde, and wyth him, three or foure of the mightiest men in that Countie. And afterwardes it addeth, They shall haue power to heare and determine (at the Kings suite) all maner of Felonies & Trespasses, done in the same County.

And hereof it commeth to passe, that euer since ech Countie hath hir proper Commissioners for the Peace, & that Counties haue

not bin conioyned in Commission, as they were sometimes before. Hereynto also may that bee referred, which M. Fitzh. (Fol.171.) hath, saying: That before the Statutes which ordained Iustices of the Peace, the King vsed to make Conseruatours of the Peace by his Commission, in those Counties and places, where he thought best, to keepe hys Peace.

The first name of *Iustices* of the *Peace.*

But now, at what time these Wardeins of the Peace, were firste named (and might truely bee tearmed) Iustices of the Peace, it is not so euident, that I dare determine vpon it. For, on the one side I know, that M. Marrowe taketh it cleare, that they were made Iustices by the Statute 18.Ed.3. Stat.2. cap.2. and on the other side I see, that they were not named Iustices in anye Statute (that I haue founde) within 17.yeres after: and it is true, that to this verye daye theyr owne Commission giueth them not anye such Title.

There is a shew (I confesse) in that Statute (18.E.3.) that they shoulde bee Iustices, because of the power to heare and determine felonies, whiche is mentioned there. But if it bee well weighed, it will appeare by the Statute it selfe, that the Wardeins of the Peace were to haue one Commission

miſsion by themſelues for the kéeping of the Peace, and that they and others (onely at times néedeful) were to haue another Commiſsion to heare and determine Felonies: So that, as they were méerelie Commiſsioners for the Peace, they had none auctoritie to determine felonies, and conſequentlye coulde not (in regarde thereof) be then worthily called Iuſtices and it is plain (in mine opinion) that the generall power of determining felonies, was firſte giuen vnto the Wardeins of the Peace (as to themſelues) by the Statute 34.E.3.ca.1 After which time it is verie true that they were commonlye reputed and called Iuſtices: for within one yeare after that time there is a Commiſsō, which I haue ſéene (*in dorſo patentiū parte* 2.) that ſpeaketh thus, *Aſſignauimus etiam vos, & tres veſtrum, Iuſticiarios noſtros &c.* and the Statute (36.E.3.ca.12.) taking order for the Quarter Seſsions to bée holden as well by them, as by the Commiſsioners for Labourers, called both the ſortes of them, by the name of Iuſtices.

I might here diſcloſe, howe, and by what degrées, the auctoritie of theſe Iuſtices of the Peace, was from time to time enlarged: But I wil reſerue that vntill I ſhall come to the forme of their Commiſsion, where I

shal find, both fitter occasion, and more proper place for it.

By whose auctoritie, and by what meanes, *Iustices* of the Peace be appointed: and of what sortes they bee.

Cap. v.

FRom the King (who is the head of Iustice) ought to flow all auctoritie to the inferiour and subalterne Iustices. And vpō this reason, it seemeth that the said Statutes (18. E.3.ca.2 and 34.E.3.ca.1) did ordaine, that the Wardeins of the Peace in eache Countie should be assigned by the Kings Commission, to the end that it might thereby appeare that they receiued their whole auctoritie & power, as it were by his owne hand and deliuerie.

Howbeit afterward, partlie through such as had *Iura regalia* within their Coūties Palatine, and did thereby make Iustices of the Peace in their owne names, and partely

ly by the meanes of sundrie Abbats and Religious persons, who (labouring by all policie to increase their iurisdictions, & to shoale out themselues from the ordinarie gouernment) had obtained graunts from the Kings of the Realme, that they themselues might make *Iusticiarios suos ad pacem conseruandam* within their owne liberties, thys prerogatiue of making Iustices was in many places afterwarde seuered from the Crowne, to no smal detrimente of the royal estate of the same.

And therefore, althoughe by the opinion of Iudge Fineux in the Abbat of Saint Albans case (20.H.7.8.) such a graunt was of no value in lawe, because it was of a Prerogatiue inseparablie annexed to the Crowne, yet King Henrie the eight thought it fit (by a generall resumption in Parliamente of all suche liberties) to restore vnto the Crowne hir auntient right in this behalfe. Whereuppon (27.H.8.cap.24.) it was decréd, that no person whatsoeuer, should haue any power to make Iustices of the Peace, but that they shuld be made by letters patēts vnder the Kings great seale, in the name & by the auctoritie of the king and his heires, kings of the Realme, in al Shires, Counties Palatine, and other places within his dominions.

So

So that now again, al Iustices of ỹ Peace at this day (except the Archbishop of *Yorke*, and the Bishops of *Durham* and *Elie*, & their tempoꝛal Chauncelours foꝛ the time being, which are seuerally by that verie Parliamẽt auctoꝛized to be Iustices of the Peace, within the libertie of *Hexam*, the Bishopricke of *Durham*, and the Ile of *Elie*: and excepte the Iustices of Peace, within the Countie Palatine of *Lancaster*, whiche also are by pꝛouision in the same Statute to be made vnder ỹ Kings vsual seale of the same Duchie) be oꝛdained by the meane of the greate Seale and ministerie of the L. Chauncelour hauing the charge of the same, but yet so, that some of them be made by Letters Patents vpõ speTwo sortes of *Iustices* of the Peace.
cial sute to the Queene and by hir bil assigned, and other some by Commission of Cõmune Course that resteth in the dispensatiõ of the L. Chauncelour himselfe.

By graunt. They of the first soꝛt, be of some called Iudicial Iustices, and Iustices of themselues, foꝛ that the Queene can not discharge them at hir wil and pleasure, but they are to cõtinue, & to enioye Iurisdiction so far foꝛthe as their Patent of graunt doth enable thẽ Mar.

And theꝛefoꝛe, if the Queene do graunte vnto a mã to be a Iustice of ỹ Peace during his life within a certaine pꝛecinct, without any

any further wordes: he shall continue suche a Iustice during his life and shal haue al that power that a Wardein or Conseruatour of the Peace had, and perhaps such power also as is giuen to a Iustice of the Peace by expresse wordes in any Statute: but he shal not haue all that power which is ordinarily giuen to the Commissioners of the Peace by their Commission. Mar.

The Maiors, and other heade officers, of many Cities and corporate Townes, be Iustices of this kind at this day, by graunts of the Queene and hir progenitors.

Those other Iustices of the Peace, which deriue their power from the Commissiō, be called Commissioners of the Peace, and doe differ from the other in this point specially, that they be Iustices during only ẏ Queenes life, and in hir life during only hir own wil and pleasure. By Commission.

These (as I said) be nowe at this day appointed by the discretiō of the Lord Chauncelour: but whether the King himselfe did at the first nominate thē (as he did those which were made by Graunt) or else did leaue the choice of them to the Lord Chauncelour alone, or to him and others, it hath some shew of question. *Commissioners* of the Peace, appointed by the *Lord Chauncelour.*

It is true, that in the Parliament holden at

at *Canterburie* 12.R.2.ca.2. (which happened shortlie after that Michael de la Pole was remoued from that place, and after the troublesome Parliament of the eleauenth yere of that kings raigne) It was enacted, that the Chauncelour, Treasorer, and keeper of the priuie Seale, the Stewarde of the kings house, the kings Chamberlaine, the Clerke of the Rolles (now called Master of the Rolles) the Iustices of both Benches, the Barons of the Escheaquer, and others that shoulde be called to the naming of the Iustices of the Peace, Shirifes, Escheators, Customers, Controllers, and other officers, should be sworn to do the same faithfullie, and without affection: But, whether the meaning of that Statute were, that they al should be continuallie present togither at the nomination of all suche officers, and whether that Statute were made but for that busy time only, it may wel be doubted. For againe, vppon faulte founde (as it shoulde seeme) that the Commissioners of the Peace were made of persons insufficiente, and dwelling in forraine Counties, it was enacted (2.H.5.Parl. 2.ca.1.) that from thencefoorth they should be assigned by the aduise of the Chauncelor & of the kings Counsel, which woords may be taken to sounde as though they hadde bene named

named before by the Lorde Chauncelour alone: and yet may they also indifferently be extended, either to adioine the aduise of the kings counsel to the Chauncelour, or the aduise of them both vnto the king himselfe.

This is out of al doubt, that 18. H. 6. cap. 11. did take order, that vpon knowledge giuen to the Chauncelour of England by any appointed to be a Iustice of Peace, that hee had not lands to the value of twentie pounds by yeare, the Chauncelour himselfe should put an other sufficiente in his place. And for want of sufficient men hauing lands of that value, learned in the Lawe, and of good gouernaunce, that the Chauncelour of Englād, for the time being, should haue power, by his discreation to put into the Commission other discrete persons learned in the Lawe, thoughe they had not landes to that value. And albeit this credite were here giuen vnto him in these particular cases onelie, yet it may wel be thought, that he hadde bene before, and should be afterwarde, trusted with the choice of all the Commissioners of the Peace generallie, the rather also for this presumptiō gathered vpon the Statute (3. E. 6. ca. 1.) which mentioneth, that the nomination of the *Custos Rotulorum* (being a verie special Iustice of the Peace) hadde of long

long time before belonged to the Office of the Chauncelour, vntil that vpō sinister occasion it was taken frō him by ỹ Statute of 37.H.8.ca.1. wherof you shall reade more in the second Booke of this treatise.

VVhat manner of men the *Commissioners* of the Peace ought to bee.

CAP. VI.

IN the choice of the Wardeins and Iustices of the Peace, the Statute lawes haue respecte to the manners and abilitie (or liuelihode) of them all, and to the skyll and learning of suche as are specially selected, and therefore named of the *Quorum*. For, Gardeins of the Peace oughte to bee good men and lawefull, no maintainers of euill, nor Barretours in the Countrey, or (as some Bookes haue it) no mainetainers of euil Barretours in the Countrey. 1.Ed.3. cap.15. Men of the beste reputation (*Meultz vailants*) moste substantiall (or of moste valour) shall bee assigned keepers of the

of the Peace. 18. E.3.ca.2.& 17.R.2.ca.9. In euerie Countie for ſafegard of the Peace ſhal be aſsigned one Lord & with him three or foure of the (*Mieulxtes vanees*) moſt valiant men of the Countie, togither with ſome Sages of the Lawes. 34. E.3.ca.1.

And after ſome troubles in the time of K. Richard.2. **it was enacted that** none ſhall be made Iuſtice of the Peace for any gifte, brocage, fauour, or affection, nor any which ſueth by himſelfe or any other, priuilie or openly, to bee a Iuſtice of the Peace, ſhall bee admitted to that office. 12.R.2 cap. 2. **And of ſome ſpecial policie it was then alſo prouided,** (ca.10. **of the ſame Parliament**) **that** no Steward of any Lord ſhoulde be aſsigned in the Cōmiſsion of the Peace. **Howbeit in the Parliament of the next yeare** (ca.7.) **it was ordered, that** (**notwithſtanding that clauſe of the former Statute**) Iuſtices of the Peace ſhould then bee made of newe in all places, of the moſt ſufficient Knights, Eſquires, and men of Law.

Againe, Iuſtices of the Peace (eſpecially ye thoſe of the Quorum) from hencefoorth ſhal be made of the moſt ſufficient perſons dwelling in the Countie (without taking any others dwelling in forraine Counties) except the Lords, Iuſtices of both Benches,

Iuſtices of Aſsiſe, the chiefe Baron, the chiefe Stewardes of the Duchie of *Lancaſter*, the Seriantes, and the Kings Attourney 2.He.5. Parl.2.ca.1.

Laſtly, for that contrarie to theſe former Statutes, men of ſmal ſubſtance had crepte into the Commiſsion, whoſe pouertie made them both couetous and contemptible, a newe Law was publiſhed to this effect following:

None ſhall bee aſsigned Iuſtice of the Peace, if he haue not landes or tenementes to the value of twentie Poundes by the yeare: And if any be otherwiſe appointed, hee ſhall within a moneth after notice of the Commiſsion (and vnder the paine of twentie poundes, and to bee put out of the Commiſsion) giue knowledge of his not hauing ſuche landes or tenementes, to the Lord Chauncelour, who ſhall put another perſon ſufficient in his place. **And the like paine is,** if he ſit, or make Warrante, or any Precepte, by force of the Commiſsion. **But this** extendeth not to Cities, Borroughes, or Townes that bee Counties of themſelues, or that haue Iuſtices of Peace (dwelling in them) by Commiſsion or graunt of the King: Nor to ſuch Counties where there be not men ſufficiente (hauing lands

landes or tenementes to the value aforesaide) learned in the Law, and of good gouernance: for then, other discrete persons, learned in the Lawe, maye by the Lorde Chauncelor bee put in the Commission. 18. H.6. ca. 11.

Nowe, although this portion of twentie Poundes by yeare, be not at this day in account answerable to the charge and countenance of a fitte Iustice of the Peace: yet who knoweth not, that at the making of this Lawe, it was farre otherwise? And therefore I doe not doubt, but as the rate of all things is greatelie growen since that time, so also there is good care taken, that none bee nowe placed in the Commission, whose Liuings bee not aunswearable to the same proportion.

Thus then, our Parliamentes (entending to make the Iustice of Peace an able Iudge) doe require, that he come furnished with three of the principal ornamentes of a Iudge, that is to say, with Iustice, Wisdom, and Fortitude, for to that summe the wordes, Good, Learned, Valiant, doe fullye amount. And vnder the worde Good, it is meante also that hee loue and feare GOD aright, without the whiche hee can not bee Good at all.

Howe manie *Commissioners* of the Peace there oughte to be in each *Countie*.

Cap. vii.

THE number of the Wardeins of ỳ Peace was not limitted, vntill that the Statute (18.E.3.ca.2.) ordained, that there shuld be two or three in each Countie: And bycause it was founde, within a few yeares experience, that this number suffised not for the gouernaunce of the Countrie, therefore by an Acte (made 34.E.3.cap.1.) it was further prouided, that in euerie Shire, one Lorde, and with him three (or foure) of the Best in the Countie, and some learned in the Lawes, should be assigned for kéeping of the Peace, and to restraine offendors.

In execution of whiche Statute, there was (amongst manye other) which I haue séene, one Commission for *Kent*, awarded (35.E.3.) to Roberte Herle, Iohn Cobham, Roger Northwood, Ralph Ireningham, Tho-

Thomas Lodelowe, Roberte Vintar, Iohn Barry, and Thomas Hartrege.

But as it falleth out manye times, that euill examples doe followe of good lawes: So here it came to passe, that whilest the Parliament prouided an increase of Officers to restraine offendors, ambition so multiplied the number of those Iustices, that it was afterward high time to make a contrarie law to diminish them. And therefore by the Statutes (12.R.2.ca.10.and 14.R.2.ca. 11.)it was prohibited, that there shoulde not bée anye moe than fiue Iustices of the Peace in anye Commission, besides the two Iustices of Assise, and certaine Lords that were assigned in the Parliament it selfe. And for the better restrainte of the increase of them in time to come, it was also then further enacted, that no Association shoulde be made to the Iustices of Peace, after their firste Commission 12.R.2. ca.10. Which lawe although it bée not abrogated til this daye, yet it was long since eluded, by making of new Commissions, that had more newe Iustices thrust in to them.

Very many Iustices of Peace at this day.

And truelye it seemeth to me, that (together with the like ambitious desire of bearing rule in some) the growing number of the Statute lawes committed from time to

time to the charge of the Iustices of ỹpeace, hath bene the cause that they also are nowe againe increased to the ouerflowing of each Shire at this day.

Iustices of Peace be ouer-laden with Statutes.

For if Hussey the chiefe Iustice (1.H.7.3.) thought that it was ynough to loade all the Iustices of the Peace of those dayes, wyth the execution, onelie of the Statutes of *Winchester* & *Westminster*, for Robberies and Felonies, ỹ Statute of Forcible entries, the Statutes of Labourers, Vagaboundes, Liueries, Maintenance, Embracerie, and Shirifes: Then how many Iustices (thinke you) may nowe suffise (without breaking their backes) to beare so manie, not Loades, but Stackes of Statutes, that haue since that time bene laide vpon them?

To dispute, whether it be nowe better to haue manye, or fewe Iustices of the Peace, in each Shire, is a noble question, & worthie of a higher consideration, and therfore it becommeth not me to enter into it.

The

The forme of the Commission of the Peace.

Cap. viii.

Forasmuch as all the auctoritie and power of the Commissioners of the Peace, floweth out of their Cōmission, and the Statutes (as it were out of two principall Springs, or Fountaines) it is now time to vnfolde the Commission it selfe, and to see what is contained in it.

Two fountains of the power of Iustices of the Peace.

ELIZABETHA, *Dei gratia, Angliæ, Franciæ, & Hiberniæ Regina, fidei defensor &c. Prædilecto & fideli, Edmundo Cantuar. Archiepiscopo &c. Necnon prædilectis Thomæ Bromley Militi, Domino Cancellario, Willihelmo Domino Burghley, Thesaurario &c. salutem.*

The Salutation.

SCIATIS, *quòd assignauimus vos, coniunctim & diuisim, ad pacem nostrā, ac ad Statuta & ordinationes apud Winton. Northampt. & Westmonast. pro conseruatione pacis eiusdē, Nec non ad ordinationes ibidem & apud Cantabrigi-*

The 1. Clause.

am, de Venatoribus, Operarijs, Artificibus, Seruitoribus, Hostellarijs, Mendicantibus, & Vagabundis, & alijs Hominibus mendicantibus qui se nominant Trauailing men. *Et similiter ad Statuta & ordinationes apud Westmonast. anno regni Henrici. 4. nuper Regis Angliæ defuncti, primo & secundo, de liberatis signorum societatis, militibus, armigeris, seu valectis, & alijs liberatis pannorum minimè dandis, nec eis liberatis aliqualiter vtendis : Ac ad quoddam aliud Statutum Henrici quinti, nuper Regis, &c. in Parliamento apud Westmonasterium &c. De contrafactura, lotura, tonsura, & alia falsitura, moneta terræ nostræ, similiter editū, iuxta vim, formam, & effectum eorundem, custodiendum, et custodiri faciēdum: Ac ad omnia alia ordinationes & Statuta pro bono pacis nostræ, ac quieto regimine & gubernatione populi nostri edita, in omnibus & singulis suis articulis, in Comitatu nostro Kanciæ, tam infra libertates, quàm extra (per quos rei veritas melius sciri poterit) iuxta vim, formam, & effectū eorundem, custodienda, & custodiri facienda: & ad omnes illos, quos contra formam ordinationum et Statutorum prædictorum delinquentes inueneritis castigandos, & puniendos, prout (secundum formam ordinationum & Statutorum prædictorum) fuerit faciendum: Et ad omnes illos, qui aliquibus de populo nostro (de corporibus suis, vel de incendio domo-*

rum

rum ſuarũ) minas fecerint, ad ſufficientẽ ſecuritatẽ de pace & bono geſtu ſuo erga nos & populũ noſtrũ inueniendã, coram vobis venire, & ſi huiuſmodi ſecuritatem inuenire recuſauerint, tunc eos in priſonis noſtris, quouſq; eiuſmodi ſecuritatẽ inuenerint, ſaluos cuſtodiri faciendum.

Aſſignauimus etiam vos: & quoſcunq; veſtrũ, Iuſticiarios noſtros, ad inquirendum per Sacramentum proborum & legalium hominum de comitatu prædicto (per quos rei veritas melius ſciri poterit) de omnimodis felonijs, tranſgreſſionibus, forſtallarijs, regratarijs, & extortionibus in comitatu prædicto per quoſcunq; & qualitercunq; factis ſiue perpetratis, & quæ ex nunc ibidem fieri vel attemptari contigerit: Et etiam de omnibus illis, qui in conuenticulis contra pacem noſtram, & in perturbationem populi noſtri, ſeu vi armata ierunt, vel equitauerũt, ſeu ex modo ire vel equitare preſumpſerint: Et etiam de hijs qui ad gentem noſtram Mayhemandam, vel interficiendam in inſidijs iacuerunt, ſeu ex modo iacere preſumpſerint. Et etiam de omnibus illis, qui capitijs, & alijs liberatis de vnica ſecta, per confœderationẽ & pro manutenentia, contra prohibitionem ac formam ordinationum & Statutorum prædictorum inde ante hac tempora factorum, vſi fuerint, & alijs huiuſmodi liberatis impoſterum vtentibus. Et etiam de hoſtellarijs, & alijs, qui in abuſu menſurarum & ponderum, ac in venditione vi- The 2. clauſe.

ctualium, ac etiam de quibuscunque Operarijs, Mendicantibus, Artificibus, Seruitoribus, Hostellarijs, & Vagabundis, ac alijs qui contra formã ordinationum & Statutorum prædictorum (pro communi vtilitate regni nostri Angliæ, & populi nostri eiusdem, de huiusmodi Venatoribus, Operarijs, Antificibus, Seruitoribus, Hostellarijs, Mendicantibus & Vagabundis, ac alijs indefactorum) deliquerint, vel attemptauerint in cõmitat. prædict. seu extunc delinquere, vel attemptare præsumpserint. Ac etiam de quibuscunq; Vicecomitibus, Maioribus, Balliuis, Seneschallis, Constabularijs, ac custodibus Gaolarum qui (in executione officiorum suorum, erga huiusmodi Artifices, Seruitores, Laboratores, Mendicãtes, & Vagabundos, ac alios prædict. iuxta formam ordinationum & Statutorum prædict. faciendorum) indebitè se habuerunt, & ex nunc indebitè se habere præsumpserint, aut tepidi, remissi, vel negligentes fuerunt, aut ex nunc tepidos, remissos, vel negligentes fore contigerit. Et de omnibus & singulis suis Articulis & circumstantijs, ac alijs præmissis (contra formam ordinationum & Statutorum prædict. per quoscunque & qualitercunq; factis siue perpetratis, & quæ ex nunc ibidem fieri vel attemptari cõtigerit) qualitercunq; cõcernentibus plenius veritatem. Et ad indictamenta quæcunq; (tam coram vobis seu aliquibus vestrum, aut alijs nuper custodibus pacis

pacis & Iusticiarys domini Edwardi 4. & Edw. 5. nuper Reg. Angliæ, ac R. 3. nuper (de facto & non de iure) Regis Angliæ, Necnon Domini Henrici nuper Regis Angliæ 7. Henrici octaui, Edwardi sexti, & Mariæ &c. ad huiusmodi felonias, transgressiones, & malefacta in commitatu prædicto audienda & terminanda assignatis, virtute diuersarum literarum eorundem Edwardi, Edwardi, Richardi, Henrici, Henrici, Edwardi, Mariæ, vobis aut alijs factarum, facta & nondum terminata, quàm coram vobis & socijs vestris nunc custodibus pacis nostræ, & Iusticiarijs nostris huiusmodi virtute literarum nostrarum facta & nondum terminata) Inspicienda, ac ad procedendum inde, ac processus (versus omnes alios, quos coram vobis seu aliquibus vestrum indictari contigerit, quousq; capiantur, reddantur, seu vtlagentur) faciendos & continuandos.

Assignauimus etiam vos 79. 78. 77. &c. quatuor, tres, & duos vestrum (quorum aliquem vestrum, vos A. B. C. D. &c. vnum esse volumus) Iusticiarios nostros ad felonias prædictas, ac ea omnia & singula quæ per huiusmodi hostellarios & alios, qui in abusu mensurarum & ponderum ac in venditione victualium & omnia alia quæ per huiusmodi Operarios, Artifices, Seruitores, Laboratores, Mendicantes, & vagabundos, qui contra formã ordinationum & Statutorum prædict. seu in eneruationem eorundem, in aliquo præsump- The 3. Clause.

ſumpta, vel attemptata fuerint, vel attemptari contigerint: Ac extortiones & regratarias prædict. tam ad ſectam noſtram quàm aliorum quorumcunq; (coram vobis, pro nobis, aut pro ſeipſis conqueri, aut perſequi volentium, audiendam & terminandum: Necnon tranſgreſſiones, & forſtallarias prædict. ac omnia alia (ſuperius non declarata) ad determinanda ad ſectam noſtram tantum: Et omnia alia (quæ virtute ordinationum & Statutorum prædictorum per cuſtodes pacis noſtræ & Iuſticiarios noſtros huiuſmodi diſcuti & terminari debent) audienda & terminanda: Et ad eoſdem operarios, artifices, & ſeruitores, per fines, redemptiones, & amerciamenta, ac alio modo, pro delictis ſuis, prout (ante ordinationem de punitione corporali huiuſmodi operarijs, artificibus & ſeruitoribus, pro delictis ſuis exhibenda) factum fieri conſueuit: Necnon eoſdem Vicecomites, Maiores, Balliuos, Seneſchallos, Cõſtabularios, ac cuſtodes Gaolarũ, Venatores, Vitellarios, Hoſtellarios, Mendicantes, & Vagabundos, ſuper hijs (quæ contra formam ordinationum, & Statutorum prædict. attemptata fuerint vel attemptari contigerint) caſtigandos & puniendos, ſecundum legem & conſuetudinem prædict. ac formam ordinationum Statutorum prædict.

Proviſo ſemper, quod ſi caſus difficultatis ſuper determinatione extortionum huiuſmodi coram vobis venire contigerit, tunc ad Iudicium inde red-

reddendum (nisi in præsentia vnius Iusticiariorũ nostrorum, de vno vel de altero Banco, aut Iusticiariorum nostrorum ad Assisas in cõmitatu prædicto capiendas assignatorum) coram vobis minimè procedatur. Et ideo vobis & cuilibet vestrum mandamus, quod circa custodiam pacis, ordinationum & Statutorum prædictorum, diligenter intendatis, & ad certos dies & loca (quos vos seu aliqui vestrum, ad hoc prouideritis) diligenter super præmissa faciatis inquisitiones. Et præmissa omnia & singula audiatis & terminetis, ac ea faciatis & expleatis in forma prædicta, facturi inde quod ad iustitiam pertinet secundum legem & cõsuetudinem regni nostri Angliæ: saluis nobis amerciamentis & alijs, ad nos inde spectantibus.

The charge to the Iustices.

Mandauimus enim Vicecomiti nostro Kãciæ, quod ad certos dies & loca (quos vos, seu aliqui vestrum, et scire faciatis) venire faciat coram vobis, seu aliquibus vestrum, tot & tales probos & legales homines de Balliua sua, tam infra libertates quàm extra, per quos rei veritas in præmissis melius sciri poterit, & inquiri.

To the Shirife.

Et vos præfat. Thom: Wotton, ad dies & loca prædicta breuia, præcepta, processus, & indictamenta prædicta, coram vobis & dictis socijs vestris, venire faciatis, & ea inspiciatis, & debito fine terminetis, sicut prædictum est. In cuius rei testimonium &c. Datum 6. die Aug. Anno reg. nostri 21.

To the *Custos Rotulorum.*

Certaine

¶ Certaine obſeruations, concerning the matter & forme of the *Commiſſion* of the Peace.

Cap. ix.

MAiſter Fitzherbert, in his treatiſe of Iuſtices of the Peace, (Fol. 11. b.) ſeemeth to be of the opiniõ, that this forme of Commiſsion was deuiſed, when Iuſtices of the Peace were firſt ordained: But (ſauing the reuerence due to ſo learned a Iudge) I ſuſpect that the matter is miſtaken by hym. For, beſides that the Commiſsion it ſelfe doeth rehearſe certaine Statutes made in the times of King Henrie the fourth, and of King Henrie the fift (many yeres after that Iuſtices of the Peace were created.) It is the agreeing opinion of al the Iuſtices (2. R. 3. 9.) that Iuſtices of the Peace had no power at the firſt, but onely *ad Conſeruandam pacem Regis*, and that afterwarde, when they had power giuen them ouer Felons, it was not ynough for them to ſay (in their Certificate of

Alterations from time to time, of the Commiſsion of the Peace.

of an Enditement of Felonie) that it was founde, *Coram Iusticiarijs Domini Regis, ad Pacem in Commitatu prædicto conseruandam,* but that they muste adde withall, *Necnon ad diuersas felonias, &c.* and that other wise their Certificat was of no value. And as it is euident, that (34. Ed. 3. ca. 1.) was the first Statute that gaue to them that power to heare and determine Felonies and Treſpaſſes: So there is a Precedent to be ſéene (35. E. 3. *in dorso patent. parte* 2.) whereby it appeareth, that the forme of their Commiſsion was then enlarged accordingly.

After that tyme alſo, it is apparaunte, that ſundrie things were by expreſſe commaundement of diuerſe Statutes put into theyr Commiſsion, of whyche ſorte bée theſe: The Statute (36. E. 3. ca. 12.) by whych there oughte to bée mention in the Commiſsion of the times of holding the Seſsiōs, of the Peace, although the ſame were afterward pretermitted, becauſe (2. H. 5 c. 4.) did alter thoſe times, in appointing of others: the Acte (42. E. 3. ca. 6.) by whiche, auctoritie ouer Labourers was giuen vnto them, and willed to bée putte into their Commiſsion: The Statute (5. Hen. 4. cap. 3.) whereby it was commaunded, that mention of *Winchester* (concerning Watch) ſhould bée added

added to their Commiſsion : and the Statute (3.H.5.ca.7.) whyche toke order, that Iuſtices of Peace ſhould haue power by the Kings Commiſsion, to enquire of the counterfaiting, and other falſifying of mony.

Beſides all whiche, it is very probable and likely, that the mention of Weightes and Meaſures, of Vagabondes, of Liueries, and of ſome other things, was firſt put into the Commiſsion, after the making of the Statutes (34.E.2.ca.5.& 6 : 7.R.2.ca.5 : 17.R.2. ca.4 : 2.H.4.ca.21.) and ſome others, whyche did firſte giue power to the Wardeins and Iuſtices of the Peace, to deale with thoſe & ſome other matters. So farre off is it, that this Commiſsion hath from the beginning retained one conſtant tenour and forme.

Yea, as I am verely perſwaded, that the forme of this Commiſsion hathe varied with the time, and receiued ſundrie acceſſions : ſo I truſt hereafter to make it plaine, that it were conuenient to reforme it now alſo, for diuers imperfections that do yet remaine in it : euen as in our memorie the Statute of Lollards, which was thruſt into the Commiſsion by 2.H.5.ca.7. and was (in Maſter Fitz. own dayes, vſually read in it, is now vpon iuſt reaſon, as a thing ſauouring of the pumpe (the Pope I would ſay) thro-

throwen cleane out of the Booke.

But firſte, let mée breake it (as it is) into partes, and leaue with you a fewe notes vpon the ſame.

The whole ſubſtaunce of this Commiſſion, is comprehended within theſe fewe tearmes: The partes of the Commiſſion.

1 The Salutation of the Prince.
2 The power of the Iuſtices: and
3 The Charge frō the Prince to them and others.

The Salutation of the Prince expreſſeth the names of the Iuſtices, and hath nothing elſe in it that needeth light. 1. The Saluſtation.

Then foloweth the Power of the Iuſtices, which is comprehended in thrée Clauſes, whereof the firſt beginneth thus: 2. The power of the *Iuſtices.*

SCIATIS *quod aſſignauimus vos coniunctim, & diuiſim, ad Pacem &c. cuſtodienda, & cuſtodiri facienda:*

The ſeconde beginneth in theſe wordes: *Aſſignauimus etiam vos, & quoſcunq; veſtrum, Iuſticiarios noſtros: ad inquirendum &c.*

The laſt beginneth likewiſe: *Aſſignauimus etiam vos, & duos veſtrum, quorum &c. vnum eſſe volumus, ad felonias &c. audienda & terminanda.*

The firſt Clauſe (or *Aſſignauimus*) giueth power to all, to many, or any one, of them, First Clauſe, or *Aſſignauimus.*

(for so Master Fitzherb. vnderstandeth the words *coniunctim & diuisim*) to keepe, and cause to be kept, the Peace, and especially to keepe these Statutes made for the maintenance of the same, that is to say, first the statute of *Winchester*, 13.E.1: Then the Statute of *Northampton*, 2.E.3.ca.3: And the Statute of *Westminster* 5.E.3.ca.14. which doth concerne the Peace, and not (as Master Fitzh. will haue it) the Statutes of *Westminster*, the first, second, or third, which as they haue almost nothing that toucheth the matter of Peace, (that of W.1.ca.9. onely excepted) so to goe from the Statute of *Northampton* to them, were to ascend, contrary to the course of the Commission, which descendeth by degrees of age and time, from elder to latter Lawes and Statutes: and for my Warrant herein, I vouch the Recorde (20.E.3. *in dorso Patentium, parte.2. membrana.7.*) where in a Commission of the Peace to Adam of Scarborowe and others, they are charged to put in execution the Statutes of *Winchester, Northampton, & Westminster*, made the fift yeare of that King: After this, the Statute of *Cambridge*, which worde in deede (as M. Fitzher. thinketh) is mistaken for *Canterburie*, and was made there, 12.R.2.ca.7.8. &.10. concerning Artificers, Labourers, Seruants, and

Maga-

Vagabõds (for of Hunters it hath no word, whatsoeuer the Commission say of *Venatoribus*, which should be *Viatoribus* as I think) then the Statute (1.H.4.ca.7: & 2.H.4.ca.21.) of Liueries and Badges: and lastly the Statute (3.H.5.c.6.& 7.) of Counterfeiting, Clipping, and Washing Money.

The same Clause also giueth them power to keepe, and cause to be kept, all other Statutes, made *pro bono Pacis, & quieto regimine populi*: by which wordes, the Commission meaneth (as I thinke) al Statutes of Armour, for that tendeth to the keeping of the Peace, as the Statute of *Winchester* it self confesseth: All Statutes for aresting of Robbers, Murderers, Felons, Royotters, and Suspected Persons, which are euerie where sayde to bee against the Peace: All Statutes concerning the duties of Shirifes, Bailifes, Conestables, &c. without which the Peace can not be kepte, as the Statute of *Northampton*, (2.Ed.3.ca.4.) plainly affirmeth: and al Statutes made for the repressing or punishment of Force, Violence, and Fighting.

This first Clause (or *Assignauimus* is closed vp with a declaration of the meane, by which they shall cause the Peace and these Statutes to bee kept: that is to say, by cha-

E.y. stising

stising the offendors, either according to the orders of the sayde Statutes, or by taking suertie of them for their kéeping of ỹ Peace, or for their good abearing, or by imprisonment vntil they wil be so bound.

Imperfections in the *Commission.*

But here, before I conclude this Clause, I must admonish the reader: that these Statutes for Labourers, Seruants, Artificers and Vagabounds, be repealed by new Actes of our time prouided in that behalfe, and that therefore they are vainely rehearsed in the Commission at this day.

It seemeth also that the Statute (3. H. 5. ca. 6) for the Washing, Clipping, and Fyling of Money, ought not now to haue any place in the Commission of the Peace: for those speciall Treasons be repealed by the generall wordes of 1. Mariæ: and although the same offences bée made Treason againe, by 5. Eli. ca. 11. yet that newe Statute giueth no power therin to the Iustices of the Peace. But yet, as concerning the coũterfaiting of false Money, the Iustices of Peace haue still (in mine opinion) power, to enquire by vertue of that Statute (3. Hen. 5. ca. 7.) and by this Commission, because that Treason was declared by the Statute 25. E. 3. and therefore it is not nowe repealed by 1. Mariæ, as the others were.

And

And these (as also that mistaking of *Cambridge* for *Canterburie*, and the inserting of the wordes *(per quos rei veritas &c.)* in this first clause without any sense, and the continual calling of them that be the Commissioners, *Custodes pacis*, after the olde name, through the whole course of the Cōmission, without once giuing vnto them the Title of Iustices of the Peace (although in all Statutes since 36. Edw. 3. they bee so termed) be some of the imperfections that I meant, when I thought it meete to haue the Commission reformed.

Neyther may I well ouerpasse, that by these wordes *(Et ad omnes illos quos contrà formam Statutorum prædictorum & ç. delinquentes inueneritis, puniendos, prout secundum formam Statutorum prædictorum fuerit faciendum &c.)* in this first *Assignauimus*, greater power seemeth to be giuen by the letter of the Commission, than is meant by the Author of the Commission: for by these wordes, it seemeth that one Iustice of the Peace may punish the Treason of counterfaitting, which I thinke is more than is thoughte meete to bee put into his handes. And euen therefore in the Commissions nexte following, was this Statute (3 H 5.) placed in the last *Assignauimus* of the same.

2. Clause or *Assignauimus.*

The seconde Clause (or *Assignauimus*) first enableth al, or any two of these Iustices (for so M. Fitzh taketh the wordes, *Vos, & quoscunque vestrum,*) to enquire of all Felonies, and Trespasses, and of all offences done against those Statutes, that are contained within the same Clause; and to enquire of all Shirifes, and other inferiour Officers, that bee remisse in the execution of the saide Lawes and Statutes committed to their charge.

Then it authorizeth them, or any two of them, to procéede, and to make processe, vpon all auntient and present Enditementes, vntill the parties shall either bee taken, or shall yeelde themselues, or bee outlawed for their contumacie.

Heere also the forme of this Commision desireth help, both in that there is reference made to those Statutes of Artificers, Laborers and Vagabondes which be repealed (as I tolde you.) And also mention had of Enditementes of too olde a Date, for any Processe to bee made vpon them at this day.

3. Clause or *Assignauimus.*

But, forasmuch as it would little auaile to the correction of Offendors, to haue their faults brought to light by Enquirie, vnlesse Iudgement and Execution bee also giuen and done vpon the same, therfore was the thirde

thirde Clause (or *Assignauimus*) in the Commission added, which giueth power to the Iustices of the Peace, or vnto two of them, (whereof one must bee of the select number of them, now commonly called of the *Quorum*, because the Commission in making that choise beginneth with that worde) to heare and determine all the offences comprehended within the same, and to chastise the offendors according to the Lawes and customes of the Realme, and according to the Statutes in that behalfe made and ordeyned. But yet so, that if any question (or difficultie) do arise concerning Extortions, then they should not proceed to Iudgement therevpon, without the aduise of one of the Iustices, of the one Bench, or of the other, or (who bee their common Oracle for answere in Law) of the Iustices of Assise.

Decision of difficulties or questions arysing before *Iustices* of Peace.

By the equitie of which Prouiso, M. Fitz. (Fo. 7.) thinketh, that they are likewise restrained in all cases of doubt whatsoeuer: howbeit he graunteth, that if they doe proceede of themselues, their Iudgement standeth good, vntil it bee reuersed by Error.

These of the *Quorum*, were wont (and that not without iust cause) to be chosē, specially for their learning in the lawes of the Realme, & therefore there is no separation

mentioned, til the Commission come to giue them power to heare and determine, in which parte that kinde of learning is moste requisite and seruiceable. And this was the reason that led the makers of the Statutes 18.E.3.ca.2 34.E.3.ca.1. & 13.R.2.ca.7. to cause it to be expresly enacted, that some learned in the Lawes should be put into the Cõmission and al Statuts, that desire the presence of one of the *Quorum*, do secretly signifie such a learned man.

But here againe the Commission (*chorda quæ semper oberrat eadem*) doth make much relation to the said Statutes that are not now at all.

3. The Charge to them, the Shirife, and *Custos Rotulorum.*

The power giuen to these Iustices hathe thus appeared: Now let vs sée the charge giuen to them and others.

They therefore, and euery of them, bée charged to be diligently intendaunt about the execution of the premises, by these words, *Et ideo vobis &c.* which how negligẽtly many of them do performe, I am afraide it is too manifeste, whyleſt ambitiously séeking the name and power of rule, they kepe smal care of doing the dutiful seruice belonging to the same.

In this clause there lyeth a sauing vnto the Prince of all amerceaments and other

things

things that shal growe due vnto hir by reason of their proceedings therevpon, of which also I will speake somewhat hereafter in place conuenient.

The Shrife is saide to haue bene charged aforehand to be attendant in the Returne of Iuries before them, in these words, *Mandauimus enim Vicecomiti, &c.* And the *Custos Rotulorum* (for it is meant of him, although hee bee not expressly so called) is charged to bring the Records and Proces of the Peace, and in due sorte to consider and directe the same, by these words, *Et vos præfat. Thom: Wotton, &c.* Of whose office and authoritie somewhat shall likewise be sayd in particular when we come to the second Booke.

Of the two *Oathes*, ministred to the *Iustices* of the Peace.

CHAP. X.

SUch as do occupy Iudicial places ought to take heede what they doe, knowing (as Iehosaphat sayde) that they exercise not the iudgements of Men onelie, but of God him

The causes why Iustices bee sworne.

him selfe, whose power as they doe participate, so he also is present on the Bench with them. And therefore, it hath bene alwayes the policie of christian Lawes, to appoint meete formes of Religious attestations (or Oathes) for such Officers to take: meaning therby not only to set God continually before their eyes (whome by such Oathe, they take to witnesse of their promise, & call for reuenge of their falshood) but also to threaten them (as it were) with temporal paines prouided against corrupt dealings, & withal to strengthen their mindes, and arme their courages, against the force of humaine affections, which otherwise might allure and drawe them out of the way.

Upon this grounde, the Statute (13.R.2. Stat.1.c.7.) which willed, that Iustices of the Peace shoulde bée made of newe in all the Counties of *Englande*, did therewithal take order, that they should bée sworne, to keepe, and put in execution, all the Statutes touching their Office, which albeit that it bée the first Oathe that I finde to haue bene ministred to Iustices of the Peace, yet I think they were neither vnsworne before, nor at any time after, as may bée collected vpon the bookes 21.E.4.67: & 12.E.4.18: I beleeue also, that that maner of Oathe was deuised but

but for that time onely, and continued not long in that forme, as being of it selfe very generall, and harde to bee obserued. And that (happily) was the cause, that it was afterward changed to that forme, which M. Fitz. in his Booke hath lefte vs, and which (with the alteration of a few wordes only) is yet at this day put in vse.

For, vpon the renuing of the Commissi-on of the Peace (which nowe a dayes happeneth as often as any person is newly brought into the same) there commeth of course a Writ of *Dedimus potestatem*, directed out of the Chauncerie to some auncient Iustice of the Peace, to take the Oathe of him whose name is newely inserted, and to certifie the same into that Courte at suche day as the Writ commaundeth.

This Writ is nowe accompanied with two Scedules, whereof the one containeth the Oathe of the Office of a Iustice of the Peace, in this forme:

YE shall sweare, that as Iustice of the Peace in the Countie of *Kent*, in al Articles in the Queenes Commission to you directed, ye shal do EGAL right to the poore, and to the rich, after your cunning, wit, and power, and after the lawes and customes of the

The Oathe of the Office.

REGAL in the printed Booke *Firth.*

the Realme, and Statutes therof made: And yee ſhall not bee of counſel with any quarrel hanging before you: And that yee holde your Seſsions after the forme of Statutes thereof made: And the iſſues, fines, and amercementes, that ſhal happen to be made, and al forfaitures which ſhal fal before you, yee ſhall cauſe to bee entred without any concealement or embeaſeling, and truely ſend them to the Queenes Eſcheaquer. Yee ſhall not LET, for gifte, or other cauſe, but wel and truly you ſhal do your office of Iuſtice of the Peace in that behalf, & that you take nothing for your Office of Iuſtice of the Peace to bee done, but of the Queene, and fees accuſtomed, and coſtes limited by the Statute: and yee ſhall not directe, nor cauſe to bee directed any Warrant (by you to bee made) to the parties, but yee ſhal direct them to the Baylifes of the ſaide Countie, or other the Queenes Officers or Miniſters, or other indifferent perſons, to do execution thereof: *So helpe you God, and by the contentes of this Booke.*

SVRCEASE, in the printed Booke.

And his Saincts, in the printed Booke.

The variance betweene this and that elder forme, ſtandeth (as you may ſée by the Margent) in thrée points: whereof, twaine bée of no waight at all, but the third did néed amendement. For right godlie and wel did

those

those.32.persons (that were putte in trust to pen Ecclesiastical Lawes) purpose to make this Lawe, amongst others:

Legitimum autem iuramentum, ijs verbis, & nullis alijs, suscipi volumus: Ita me Deus, per Dominum nostrum Iesum Christum adiuuet.

This Oathe of the Office consisteth of six Articles, which (for memories sake) I haue seene expressed in these six Verses following:

Do equall right to riche & poore, as Writ and Law extends: 1.
Giue none aduice in any cause, that you before depends: 2.
Your Sessions holde, as Statutes bid: the forfeits that befall, 3. 4.
See entred well, and then estreate them to the Cheaquer all:
Receiue no fee, but that is giuē by Queene, good vse, or right: 5.
Ne sende Precept to partie selfe, but to indifferent wight. 6.

The other Scedule comprehendeth that forme of Oathe, which (after the seconde abolishment of the vsurped authoritie of the Romish Pharao, by the ioyous entrie of our gratious Queene Elizabeth) was in the first Parliament of hir raigne (ca. 1.) appointed for Iustices of Peace (amongest others) to take, before that they should exercise the office: and it hath these wordes:

The Oath of *Supremacie.*

I WILLIAM LAMBARDE, do vtterly testifie & declare in my conscience, that the Queenes Highnesse is the only supreme Gouernour of this Realme, and of all other hir Highnesse Dominions and Countries, as wel

as wel in al ſpiritual and eccleſiaſtical things (or cauſes) as temporal: and that no foraine Prince, Perſon, Prelate, State, or Potentate, hath, or ought to haue any iuriſdiction, power, ſuperioritie, preheminence, or authoritie, eccleſiaſticall or ſpirituall, within this realme: And therfore I do vtterly renounce and forſake all foraine iuriſdiction, powers, ſuperiorities, and authorities, and doe promis, that from henceforth I ſhal beare faith and true allegeaunce to the Queenes Highneſſe, hir heires and lawfull ſucceſſours, and (to my power) ſhal aſsiſt and defende al iuriſdiction, priuiledge, preheminence, and authoritie graunted or belonging to the Queenes Highneſſe, hir heires and ſucceſſors, and vnited and annexed to the Imperial Crowne of the Realme: *So help me God, &c.*

There hath been care taken, once or twice (in our memorie) to exact this latter Oathe of all the Iuſtices of Peace throughout the Realme, whereof ſome good hath enſued: But yet many a Iuſtice there is, that by indirect practiſe neuer toke eyther this or the former, whereof what harmes doe and may growe, I leaue to wiſer and higher men, to bee conſidered.

Of

Of the power absolute, and limited, that the Iustices of the Peace haue.

CAP. XI.

THE power of the Iustices of Peace, is in some cases Limited, & (in other some cases) Absolute: By which latter word, I do not meane absolute Simply, but after a Manner: For, they may neither hang a man for a greeuous Trespas, nor fine him for a Felonie, and therefore this absolute authoritie is to our Law better knowne by the name of Discreation, bycause the Iustice of Peace may exercise sometimes *Legis actionem*, and sometimes *Indicis officium*, or (which is all one) *Iudicium & Decretum*, as the case shall offer, and the law will suffer him. Discreation.

It is a good Counsell which Aristotle giueth in his Rhetorikes *ad Theodectem*, that in the making of lawes, *Quoàd eius fieri possit, quamplurima legibus ipsis definiantur, quàm paucissima verò Iudicis arbitrio reliquantur:*

and

and the Commission of the Peace (following that aduise) doth leaue little (or nothing) to the discreation of the Iustices of the Peace, but byndeth them faste wyth the chaines of the Lawes, cuſtoms, ordinances, and Statutes.

Howbeit, our latter lawes of Parliament, although they also do endeuour (for the most parte) to holde the same course, yet forasmuche as euerie considerable circumstance can not be foreséene at the time of the making of the Lawe, they doe many times leaue to be supplyed by the discreation of the Executioner of the Lawe, that thing which was not conueniently comprehended before hand, by the wisdome of the maker of the Law. And therfore, although Discretion be necessarie in the execution of euery law (be it neuer so certainly set forth, and bounded in it selfe) yet (in the mouth and language of our Law, (that onelie and properly is said to be done by Discretion, which is not specially limited with all the circumstances, but is indifferently referred to the consideration of the Iustice that is putte in trust with it

And truely it is to be wished, that Iustices of the Peace would not by colour of this reference to their Discretion in some fewe

cases,

cases, arrogate vnto themselues auctoritie to vse their discretion, and to play (as it were) the Chauncelours in euerie cause that commeth before them. For no way better shall the Discretion of a Iustice of the Peace appeare, than if he (remembring that he is *Lex loquens*) doe containe himselfe within the lists of law, and (being soberly wise) do not vse his owne Discretion, but onelye where both the Law permitteth, and the presente case requireth it. Right well sayde Cicero: *Est sapientis Iudicis cogitare, tantum sibi esse permissum, quantum sit commissum ac creditum.*

Of the *Iurisdiction*, and *Coertion* belonging to the *Iustices* of Peace.

CAP. XII.

AS Iustice can not bee administred without both a Declaration of the law, and an Execution of the same: So, to the ende that oure Iustices of the Peace maye bee able to delyuer Iustice, they are accomplished

with double power, the one of Iuriſdiction, and the other of Coertion, the whych other men do call *Vocationem & Prahenſionem*, that is to ſay, Auctoritie, not only to conuent the perſons, but alſo (after the cauſe heard and adiudged) to conſtraine them to obey theyr order and decrée.

Iuriſdiction. This Iuriſdiction of theirs is exerciſed, for the moſt parte (if not altogither) aboute thoſe cauſes which bée in a maner the ſame that the Ciuill Lawyers doe call *Iudicia publica*, partly, becauſe the Prince (who repreſenteth the heade of the Common Wealth) hath intereſt in the moſt of them, as wel as that priuate perſon which is immediatelye offended: & partly, bicauſe they are not commonly tried by ſuche Action, as other Ciuil and Priuat cauſes are, but rather by Criminall, & Publique Accuſation, Information, or Preſentment.

And herein the Iuſtice of the Peace is by the one halfe ſuperiour to the ancient Conſeruatour of the Peace, who had only Coertion in a few caſes, and no Iuriſdiction in any cauſe that I remember.

But if the authoritie of theſe Iuſtices ſhoulde ceaſe, when the fault is told, heard, and adiudged, then ſhould they be no better than halfe Iuſtices: and therefore the Lawe hath

hath also put Cohertion, Execution, or punishement (as I said) into their hands, least otherwise their iudgements should be deluded for want of power to bring thē to effect.

Cohertion, or punishment, for what causes it is appointed.

This Punishment then, is an orderly execution of a lawfull iudgement, layed vpon an offendour, by the minister of the Lawe: And it is done for foure causes: first, for the amendment of the offendor: Secondly, for examples sake, that others may thereby bee kept from offending: Thirdly, for the maintenaunce of the auctoritie and credite of the person that is offended: & these three reasons be common to all such punishments. Seneca rehearseth the fourth finall cause, that is to say, that (wicked men being take away) the good may liue in better securitie: & thys pertaineth not to al, but to Capitall punishments onely, as euery man may at the first hearing vnderstande.

The Romanes vsed specially, eight sortes of chastisements, knowen to them by these names, *Damnum, Vincula, Verbera, Talio, Ignominia, Exilium, Seruitus, Mors*, that is, losse of goods, imprisonment, stripes, retaliation, reproch, banishment, seruitude & death: All which our Lawe (before the Conquest) was wont to inflict, albeit that nowe, Seruitude, Retaliation, and Banishement bee out of vse.

The sortes of punishment.

The punishments that bee commonly put in execution at this day, and wherewith the Iustices of ỹ Peace haue to do, may be diuided into Corporall, Pecuniarie, & Infamous.

Corporall.

Corporal punishmẽt, is either Capital or not Capital. Capital (or deadly) punishment is done sundrie wayes, as by hanging, burning, boyling, or pressing: not Capitall, is of diuers sorts also, as cutting off the hand, or eare, burning (or marking) the hande or face, boaring through ỹ eare, whipping, imprisoning, stocking, setting on the Pillorie, or Cucking stole, whiche in olde tyme was called the Tumbrell. Of this kind of punishmẽt, our old law (making pretious estimation of the liues of men) had moe sorts than we now haue, as pulling out the tongue for false rumours, cutting off the nose for adulterie, taking awaye the priuie partes, for counterfaiting of money, &c.

Pecuniarie.

Vnder the name of Pecuniarie punishement, I comprehende al Issues, Fines, Amerciaments and Forfeitures of Offices, gwdes, or landes.

Infamous.

And if the Iustices of Peace may by vertue of their Commission deale wyth suche Conspirators as do confederate togither, to cause anye person vniustly to bee endited of Felony, whereof afterward he is acquited (as some

some do think they may) then is there a speciall punishement in that case appointed by lawe, which in 24.E.3.73. is tearmed Vilanous, and may bée well called Infamous, because the iudgement in such case shal be like vnto the auntient iudgement in Attaint, as it is said 4.H.5.Fit.Iudgement 220. and is in 27.lib.Ass.Pl.59. set downe to bée, that theyr oathes shall not be of any credite after, nor lawfull for them in person to approche the Queenes Courtes, and that their landes and goodes be seazed into the Queenes handes, their trees rooted vp, and they imprisoned, &c. And at this day, the punishmēt appointed for Periurie (hauing somewhat more in it than Corporal or Pecuniarie paine) stretching to the discrediting of the testimonie of the offendour for euer after, maye bée partaker of this name.

That *Iustices* of the Peace, be *Iudges* of *Record*.

CAP. XIII.

IT maketh not a little, both for maintenance of the Peace, and for the credite of the Iustices thereof, that they are numbred amongst the Iudges of Record:

for, on the one side euil doers will be afraid, whē they shall see Memorialles of their wickednesse before their eyes, and on the other side the proceedings of those Iustices shall be so much the more reuerenced & set by, as it shal appeare that their endeuours are countenaunced wyth the fauour of auctoritie. And therefore lette vs see what is meant by the word Record.

Recorde, what it is.

The Latine men vse *Recordor*, when they will signifie, to keepe in mind, or to remember, in which sense the Poet saide,

Sirite audita recordor:

And after the same sense also doeth our Lawe vse it. For, Recordes be nothing else but Memorialles, or Monumentes of things done before Iudges that haue credit in that behalfe. And therefore, where King E.1. doth in the beginning of the Booke (called Britton) set forth the Iudges of his Courtes, he saith of some, that they shall haue auctoritie of Record, and of others that they shal beare Record, both which do mean but one thing, namely, that they shall bee trusted in the reporte of causes happening before them: and we yet say in common speeche, Such a man shall beare record of a thing, when wee intende to say, that he remembreth it, and can beare witnesse of it. So that in the vse of the word

word there is (in maner) no difference, and therefore let vs examine the matter.

One man may affirme a thing, and an other may deny it, but if Recorde once saye the worde, no man shall bee receiued to Auerre (or speake) against it. For (sayth M. Bracton Fol. 156. writing of a speciall case, where the Shirife in hys Countie hath Recorde) If men shoulde be admitted to deny the enrolled actes of the Court, then would there neuer bee any ende of controuersies. And therefore, to auoide all contention that may arise, whilest one saieth one thing, and one other sayeth an other thing, the Law reposeth it selfe wholy and solely in the report of the Iudge: and hereof it commeth, that he cannot make any Substitute or Deputie in his office (as M. Bracton and Britton bothe, do affirme) seeing that he may not put ouer the confidence that is put in hym.

This Recorde or Testimonie, is firste contained wythin the brest of the Iudge (as our Law speaketh) & afterwarde committed to the Rolles, which are therefore figuratiuely called Records also. For you may see 7. H. 6. 28. in Hildebrands case, 19. H. 6. 9. and elsewhere, that during all the tyme of that Tearme, in which any thing passeth before the Iustices at *Westminster*, the Record ther-

The Rolles bee *Recordes.*

of is in *Scrinio pectoris*, in their owne harts, or brests, so that they may at their own plesure correct or amēd it: But after the Terme ended, it is only in their Rolls, ouer ẏ which they haue no controlment. And this agreeth right wel with that which Britt. Fo. 3 affyrmeth, saying in the Kings person thus: And albeit that we haue graunted to our Iustices to beare Record of the pleas pleaded before thē, yet by this we wil not that their record shalbe any warrāt in their own wrong, nor that they may raze or amend their Roll, nor make record against their Enrolment.

Thus much generally of al Iudges of Record now touching our Iustice of ẏ Peace, it is the opinion of the Court (9. E. 4. 3: & 14. H. 8. 16.) and of diuers other Bookes in oure Law, that euery one of them, euē by himself is a Iudge of Recorde. For (as you haue heard) he is made by the great Seale, a matter of Record, & hath Iudiciall power giuen vnto him, euē by the first *Assignamus* of the Commissiō. He hath also a Seale of his Office by the opinion of Brudnell. 14. H. 8. 16: and if he make any Warrant, although it be beyonde hys auctoritie, yet it is not disputable by a Constable, or other inferiour Minister, but must bée obeyed. And hée maye take a Recognusance for the Peace, as appereth

reth, 7.H.4.34. and common experience teſ-leth it, which none cã do, but a Iudge of Re-corde, becauſe the acknowledging of that ſum, is to remaine as a matter of Recorde. Yea by good opinion 2.H.7.1. a *Superſedeas* of the Peace made by one Iuſtice of peace, vn-der his ſeale, being brought into the Seſſi-ons, is a ſufficiẽt Record to proue that there is a Recognuſance of Peace takẽ by ẏ ſame Iuſtice, and is warrant ynough to call the partie bounde therevpon, and if he make de-faulte to Record the ſame. Moreour his Re-cord or teſtimonie is in ſome caſe of greater force and value, than an Enditement vnder the oath of twelue men: for his Recorde (as I wil ſhew particularlie hereafter, in place conuenient) ſhal conclude the partie ſo, that he ſhal not be admitted to Trauerſe or gain-ſay it 21.H.6.5: Fitzh.Fol.18: 15.R.2.ca.2: 11.H. 7.ca.15: & 33.H.8.c.6. Thus much being tru-ly ſaid of any one Iuſtice of the Peace, moſt truely may it be affirmed, that two, or moe ſuch Iuſtices, ſitting in the executiõ of their auctoritie, are Iudges of Recorde.

Greate cauſe haue the Iuſtices of Peace therfore, to take diligẽt hæd, that they abuſe not this credite, either to the oppreſſing of a-ny ſubiect by making an vntrue Recorde, or to the defrauding of ẏ Prince by ſuppreſſing

a true Record.

How long time the auctoritie of the *Commissioners* of the Peace is to endure: and by what meanes it may be suspended, or determined.

Cap. xiiii.

We haue alreadie touched, that the power of the Commissioners of the Peace is not perpetuall, but nowe ẏ place serueth to handle it at ful.

The Commissioners of the Peace, are to continue during onely the pleasure of the Prince by whose pleasure they were at the first appointed: and therefore, by the determination of that pleasure, their auctoritie ceaseth also. Besides the which, there are other meanes to determine their Auctoritie, as namelye, the Accession of an other office, the Presence of a higher power, and in some special case the want of Adiournement of their Commission.

The pleasure of the Prince may be determined,

mined, either by expresse word, or by implication, or by death. By expresse worde.

The Queenes Maiestie therefore, maye discharge the Commissioners of the Peace by hir expresse Writ, vnder the great Seale. L.5.E.4.32. And if she sende a *Supersedeas* to al the Commissioners of the Peace, that wil suspende all their auctoritie: But yet so, as it may be reuiued by a *Procedendo*, and therfore it doth not vtterly determine their auctority, as may be gathered by 12.h.All.Pl.21.

Againe when the Queenes Maiestie maketh other Commissioners of the same kind within the same limits, it is implied therby, that the former Commissioners shall haue no lõger power, although there be neuer a word spoken of the discharge of them, for the repugnauncie, 3.Mar. Regi. Brooke. Tit. Commission 24. But yet if there be Iustices of the Peace by Commission in a whole Countie, and afterwarde the Queene maketh another mã Iustice of the Peace, in one Towne of the saide Countie, Chocke (onely against others) was of opinion 10.E. 4.7. that the power of the firste Commissioners continued stil in that Towne, because that is not altogither contrariant. And Iudge Fineux helde also (20.Hen.7.8.) that if the Queene make a proper Iustice of the Peace

By implication of a new Commission.

General, and proper Iustices.

Peace within a special Libertie, yet may the generall Iustices of the Peace of that Shire medle there vnlesse there be words of Prohibition in the Patent, as, *quod nulli aly Iusticiarij nostri se intromittant &c.*

If the aũtient Commission of the Peace were to foure persons, and afterwarde the Queene should make one man a ful Iustice of the Peace through the same limit, during his life, then should the handes of the foure Commissioners be closed, saith Marrow.

And a new Commission *pro hac vice tantum*, wil determine the olde: So also, a new Commission to heare and determine Felonies determineth the old Commission of the Peace concerning Felonies, but not concerning the Peace: And a newe Commission of the Peace, *ad inquirendum tantùm*, is a determination of the olde Commission, *ad audiendum & terminandum*, by Mar.

But it is plain, by the preamble of the statute (2.&3.Phil.& Mar.ca.18.) that the Law was taken, that if a Commission of ỳ Peace were firste graunted to certaine within a towne, and after an other Commission had bene graunted to other within the whole shire, that this had bene a *Supersedeas* to the Commissioners within the said town.

Howbeit this determination of the olde

Com-

Commiſsion (that we ſpeake of) groweth not immediatelie by the making of a newe Cõmiſsion but either after ỹreading or proclayming of the new Cõmiſsion at the Seſſions of the Peace, or at the full Countie, or elſe by holding of ſome Seſsion by vertue of the new Commiſsion (in al which caſes the old Commiſsioners muſt take notice of the new Commiſsion) or elſe after the giuing of notice of the new Commiſsion vnto the old Commiſsioners: for otherwiſe al the meane actes of the old Commiſsioners bee good in law. Mar. & 21. H. 6. 29: & 34. lib. Aſs. Pl. 28.

And for as much as ſome Cities and Corporate Townes founde themſelues greeued with the law ſtanding, as hath bene remembred, it was ſpecially ordained by the ſaide Statute (2. & 3. Ph. & Mar. c. 18.) that a Commiſsion of the Peace and Gaole deliuerie made to a Citie or corporate towne (not being a Countie by it ſelf) ſhould not be determined by the making of ſuch another Commiſsion afterward to any of the Shire, Lath, Rape, or Wapentake, in which, that Citie or towne ſtandeth.

Finally, it is to be noted, that in al caſes where an aũtient Commiſsion of the peace is determined by a new, yet no Proceſſe or Suite (hanging before the olde Commiſsioners)

ners)

ners) shall be discontinued thereby : 11.H.6. ca.6:& 1.E.6.ca.7.

By the death or demise of the Prince, also dieth the power of al the Commissioners of the Peace made by him : for he maketh thē *Iusticiarios suos*, so that he being once dead, or hauing giuen ouer his Crowne, they are no more his Iustices : and the Iustices of the next Prince they shall not be, vnlesse he wil so make them, 4.E.4.44:&1.E.5.1.

It seemeth, that some toke the Lawe to bee, that if a Iustice of the Peace were created a Duke, Marquesse, Earle, Vicount, or Baron or elected an Archbishop, or Bishop, or were made a Knight, or Iustice of anye of the two Benches or Seriēāt at the law, that then his Office of the Peace was determined therby, because it could not be thought, that (his name being changed) he should remaine the same person : And so, if he were made Shirif, that his Iusticeship ceased also, because (as Mar. saith) he could not be bothe a Iustice and an Officer, to directe and serue, his owne Preceptes : and so likewise was it thought of him, if he were made a Coroner, but not so if he were made an Vndershirife. And therefore, for explanation of the Lawe in the moste of these cases, it was enacted (E.6.ca.7.) that if a Iustice of the Peace were made

made Duke, Marqueſſe, Erle, Vicount, Baron, Archbiſhop, Biſhop, Iuſtice, of the one Benche or other, Knight, Serieant at the Law, or Shirife that yet he ſhould be Iuſtice of the Peace ſtill: But that acte was afterwarde vpon good reaſon controlled in parte, and a new law made (1. Mar. Parl. 1. ca. 8.) by which it was ordered, that no man ſhall exercife the office of a Iuſtice of the Peace, during onely the time that he is Shirife of the ſame Countie, wherein he is alſo Iuſtice of the Peace.

By the preſence of a higher power.

Furthermore, if the Iuſtices in Eire (beeing of a higher power than Iuſtices of the Peace) doe (after proclamation thereof firſt made) come into any Countie and ſit there by vertue of their auctoritie, then ceaſeth the power of the Commiſſioners of the Peace Mar. And he thinketh ſo likewiſe, if the Kings benche (vpon proclamation thereof made) ſhuld remoue into any Countie. But aſke of this, for if it ſhould be ſo, then it may be ſome queſtion alſo, what is wrought by the comming of the Iuſtices of the *Niſi prius* into the Countrie, who do ordinarily bring Commiſsion of Oyer and Determiner, and of Gaole deliuerie with them.

By want of adiournement.

Laſtly, if Iuſtices of the Peace, that haue a Commiſsion *hac vice tantum*, do ſit by vertue

tue of their Commiſsion, and doe not Adiourne the ſame, it ſeemeth that their Commiſsion is determined thereby. Brooke Tit. Commiſsion 11.

That all the auctoritie of the *Iuſtices* of the Peace is exerciſed, either out of the *Seſſions*, or at, (or by reaſon) of the *Seſſions* of the Peace &c.

Cap. xv.

A ſum of that which is ſaid.

HItherto I haue dilated that whiche lieth in the firſt part of ỹ Definition of the Iuſtices of Peace and haue withall giuen you a Theoricque (or Inſight, as it were) of their whole Office in ſhewing, what it is, when it begã, how it is endowed by what means it is maintained, and after what ſort it may be determined.

But nowe, for as much as all the power of the Iuſtices of the Peace is directed to that ende whiche is diſcloſed in the latter parte of the ſame Definition, namelye, For the conſeruation of the Peace, and for the execution of their Commiſsion, and of the Statutes committed to their charge, it is meete that

that I enter into the Practique of their Office & dutie, & shew you from pointe to point howe the same is to be done & administred.

And for ỹ more lightsom proceeding herein: I will set forth the power of the Iustices of the Peace by a Distribution, thoughe not Essential, yet such as may suffice to conueigh my whole plotte and meaning.

A partition of that which followeth in both these Bookes.

Whether therefore, the Iustices of the Peace, doe (by vertue of the Commission or Statutes) enquire, or Heare and Determine by the way of Iurisdiction: or else doe keepe (or cause to be kepte) the Peace, or doe punish and execute, by waye of Coertion: And whether the same also be done, by their Regular power, or Absolute auctoritie: It is always practised and done, either out of the Sessions of the Peace, or else at (or by reason of) the Sessions of the Peace.

The summe of that which is hereafter contained in this first Booke.

And that which is done out of the Sessions, is eyther such as one Iustice alone may do, or else it requireth the help and presence of other Iustices with him. And therfore first of that which one Iustice alone may do, out of the Sessions.

Of *Suertie* of the Peace, and the *Good Abearing*: and of sundry things incident vnto the same: And what one *Iustice* of Peace out of the *Sessions* may doe therein.

Cap. xvi.

FOr as much as the Conseruation of the Peace standeth partely in prouiding that it bée not broken, and partely in punishing such as haue already violated & broken it: and for that any one Iustice of the Peace is sufficiently armed with auctoritie (out of the Sessions) to preuent the breache of the Peace, both by taking Suertie for the kéeping of it, and for the good behauiour of Offendors, I thinke good, first to shew what Suertie of the Peace is: then, to open how it may be commanded: after that, to declare how the same commandement shal bée executed & brought to effect: fourthly, to disclose what shal become of the Suertie when it is taken: and lastly, to describe the Suertie of the Good behauiour or good Abearing, and to confer the handling therof with that of the Peace.

The partes of this Chapter.

The auntient Normans had a manner of Suerty of the Peace, which they named Trewes (the same that we cal Truce) and which they

they vsed to giue after this order. Hée of whome it was demaunded, didde (in open Court) take him by the hand, that demaunded it, and did withal solemnly swear, that neither hée, nor any of his, shoulde doe him harme. But our Gouernors, knowing that euill men bée more restrained by losse of goods, than by conscience of an Oathe, haue vsed to take sure bond, & that to the Prince, for the securitie of such as bée in feare. And therfore I wil at this day call Suretie of the Peace, An acknowledging of a bond to the Prince, taken by a competent Iudge of Recorde, for the keeping of the Peace. And it is called Suertie of the worde *Securitas*, because the partie that was in feare, is therby the more quiet and secure.

What *Suertie* of the Peace is.

This Suertie may a Iustice of the Peace commaunde, either as a Minister when hée is willed to do it by a higher auctoritie: or as a Iudge when hee doth it of his owne power deriued from his Commission.

Hée doth it as a Minister, when the Writ of *Supplicauit* (which in old time was called *Breue de Minis*, as appéereth by the Register) directed out of the Chancerie, is deliuered to his handes: for then hée only is to direct his Precept to compel ỹ partie vpon that Writ to find Suerty for ỹ Peace. 21.H.7.20.Fineux.

Suertie of the Peace taken vp on a *Supplicauit*, by a *Iustice* of the Peace, as a *Minister*.

The forme of which Precept (or Warrant) may bee thus in English:

GEORGE MVLTON, one of the Iustices of the Peace of our Soueraigne Lady the Queenes Maiestie within the Countie of *Kente*, To the Shirife of the sayde Shire, the Constables of the Hundred of *Wroteham*, the Borsholder of the Towne of *Ightham*, and to al and singular the Quenes Maiesties Bailifes, and other Ministers, as well within Liberties as without, in the said Countie, and to euery of them greeting. Knowe yee that I haue receyued the commaundement of our saide Soueraigne Lady in these wordes (reciting the whole Writts of *Supplicauit*, which is not alwayes of one forme, because it is sometimes directed to all the Iustices of the Peace, sometimes to them and the Shirife, and sometimes to one Iustice alone) or reciting onely the effect of the *Supplicaut*, thus:

Knowe yee, that I haue receyued the commaundemente of oure sayde Soueraigne Ladye, to compell. *A. B.* of *Ightham*, in the sayde Countye Yeoman, to finde sufficente suertye for hir Maiesties Peace by hym to be kepte towards *C. D.* of the sayde Towne

Towne of *Ightham* Taylor. And therfore on the behalfe of our ſaide ſoueraigne Ladye, I commaunde and charge you ioyntly & ſeuerally, that immediately vpon the receipte hereof you cauſe the ſayde *A. B.* to come before mee, at *Ightham* aforeſaide, to finde ſufficient ſuerty and mainpriſe for the Peace to be kept towards our ſayde Soueraigne Ladie, and al hir liege people, & ſpecially towards the ſayde *C.D.* And if he the ſayde *A.B.* ſhal refuſe thus to doe, that then you him ſafely conuey, or cauſe to bee ſafely conueyed, to the next Gaole of hir Maieſty in the ſayde County, there to remaine vntil that he ſhall willingly doe the ſame. So that he may bee before the Iuſtices of the Peace of our ſaid ſoueraign Lady within the ſaid Coũty at the next general ſeſsiõs of the Peace to be holden at *M.* there to anſweare to our ſayde Soueraigne Ladye for his contempte in thys behalfe. And ſee that you certifie your doing in the premiſes, to the ſayd Iuſtices at the ſayde Seſsions, bringing thẽ thyther thys Precept wyth you. Yeouẽ at *Ightham* aforeſayde, vnder my Seale the fourth daye of Auguſte in the 23. yeare, &c.

A Iuſtice of the Peace, may alſo by vertue of his Office, and as he is a Iudge, commaunde this Suertie to be found, and that

Suertie of the Peace taken by a Iuſtice of the Peace as a Iudge.

either of his owne motion and discreation, or else at the requeste and prayer of an other.

By his owne discreation.

For hée may cause a Common Barrettour, Ryottour, one that maketh an Affray, or other person to him Suspected, to finde Suertie of the Peace, 9. Edward. 4. 3. *Curia.* And if he sée men contending in hoate wordes, and threatning the one to hurt (or kil) the other, hée may of Discreation, and ought of Duetie (as I thinke) to commaund them to finde Suertie of the Peace, and thereby prouide for their mutuall safetie. For, as he is put in trust with the care of the Peace, so ought hée both to employ his witte, and to vse his auctoritie, to preuente the Breache of the same. And if a man that was bound to kéepe the Peace, haue broken his bonde, the Iustice of Peace ought of Discreation to bynde him of newe, 21. Edward. 4. 40: & Marrow.

And his auctoritie is so little to bée controlled in this matter, that Maister Marrow is of the opinion, that if a Iustice of the Peace should procure one man to demaund Suertie of the Peace against another, and hée him selfe shoulde graunte a Warrant for it, by which the partie is arrested, yet no Action woulde lie against that Iustice for so

so doing: because hée might haue graunted it without any demaunde made, and then it shall not bée saide but that hée sawe cause to prouoke the partie to aske it, and him selfe to graunt it.

I doe on the other side remember, that a Iustice of the Peace, was putte out of the Commission of the Peace (by order in the Starre Chamber) for that hée refused to accepte a Suertie of the Peace offered vnto him by one that was commaunded (by an other Iustice of the Peace in the same Shire) to finde Suertie of the Peace, to whome (as the partie alleaged) hée durste not goe to offer it, for feare that hée woulde execute vpon him the malice that hée bare against him.

Suertie at the request of an other.

In commaunding this Suertie, at the suite of another, or of his owne discreation, sundrie things are wisely to bée considered: first, for whome, and against whome: then, for what cause, and how, it ought to bée required or commaunded: and lastly, by what meanes it shall bée enioyned.

For whome, and against whome, *Suertie* of the Peace lieth.

The wife, if she be threatned to be killed, or to be outragiously chastised by hir husbande, may with good reason demaunde the Peace against him. Fitzh. Nat. Br. Fo. 80: & 239. And I do not doubt but a Iustice may in

such a case commaund it vpon his owne discreation.

The husbande also may demande the Peace against his own wife in such a case: and any man may demaunde it against the wife of another. Mar.

A man attainted of Treason, or Felonie, or conuict of Heresie, or Abiured, a Dumbe man, or an Infant, (though within 14 yeres of age) or a Villaine against his Lorde, may demaunde and ought to haue Suertie of the Peace, Mar. And I doe not finde any strong reason why the Lorde against his Villaine or another man against a dumbe man or against an Infant aboue the age of 14 yeares, ought not vpon good cause to haue it, though the two last can not be bound for thẽselues. But a madde man shall not haue Suertie of the Peace, at his owne request (as M. Mar. thought) because hée hath no discreation to aske it: and therefore (if there bée cause) hée ought to bée prouided for by the discreation of the Iustice, as I thinke.

A man attainted in a Premunire, or that is an Alien borne, and no Denizein, ought not to haue this Suertie at his desire, as M. Mar. taketh it: But perhaps hée would haue changed his opinion, in the case of Premunire (if hée had liued at this time) vpon sight

of

the Statute 5. Eli. ca. 1: for, such a man may not nowe be killed, as though hée were out of the protection of the Queene: and as touching the Alien, some thinke there ought to bée a difference betwene such an Alien as is of the Enmitie of the Queene, and him that is of hir Amitie: for the Statuts (Mag. Car. ca. 30: 9. E. 3. ca. 1: 14 E. 3. Sta. 2. ca. 2. and sundry other) do al vse that difference in Marchant strangers, and do prouide, that such of them as bée not Enimies of the Realme, may both safely come into the Realme, and tarie heer, and go hence, at their pleasures.

But the case may wel bée doubted of, because the Commission it self séemeth to authorize the Iustice of Peace, no further than to prouide for the Queenes people, of which number no Alien séemeth to bée. But why any Alien may not bée bound to the Peace, I do not yet sée.

Furthermore, one Iustice of the Peace, (saith M. Mar.) may graunte this Suertie to any man, against one of his fellow Iustices. But as M Mar. requireth a Discreation in a Iustice of the Peace, when Suertie is craued of him against a Shirife, Coroner, Escheator, or such other Officer, whom he wisheth not to bée bounde to kéepe the Peace *versus cunctum populum*, but onely towardes him that

prayeth it, leaſt otherwiſe it ſhoulde argue thē to be vnworthy of ſuch Offices) ſo much more he ought to vſe good diſcretion, in grā-ting it againſte his fellowe Iuſtice, leaſte o-therwiſe he both bring the Office in con-tempte, and himſelfe to reprowfe by it. But I doubt not, but that one Iuſtice of Peace (if he wil) may pray Suerty of the Peace at the hands of his fellow Iuſtice againſt an other perſon, and the Recognuſance may then be accoʒding to the common foʒme, with *Et præcipuè verſus, &c.*

Hitherto of thoſe, foʒ whome, and againſt whom, the Iuſtice of Peace may grant this Suertie when it ſhall be required, which wil ſuffiſe to giue him light what to doe in like caſes.

Suertie of the Peace againſt a *Lorde.*

But ſome others there bee perhaps with whome he may not wel medle: As if a man haue cauſe to require ỹ peace againſt a Lord he foʒ ſo ſmall a cauſe is not to be arreſted (as I take it) by warrante from a Iuſtice, noʒ yet by a *Supplicauit* out of the Chaunce-rie: But the Lord Chauncelor may in ſuch caſe graunte to the partie a *Subpœna* againſt that Lord foʒ it, as it ſemeth by 35. H. 6. Fitz Tit. *Subpœna.* 20. Foʒ ſuch an opinion hath the lawe had of the peaceable diſpoſition of Noble men, that it hath bēene thought ỹ nough

nough, to take one of their promises vpon Honor, that he would not breake the Peace against a man, if at the least we may beleue the report of M. Brooke, Tit. Contempts. 6.

The cause for which this Suerty of the Peace may be required or commanded, appéereth in the first *Assignauimus* of the Commission of the Peace, in these wordes, *Et ad omnes illos qui aliquibus de populo nostro, (de corporibus suis, vel de incendio domorum suarũ) minas fecerint, ad sufficientẽ securitatẽ de pace &c. inueniendam, &c.* which M. Fitz. (Fo. 8.) construeth thus: He that is threetned that he shal be hurte in hys bodie, or that hys house or goods shal be brent, may demaunde Suertie of the peace for his safegard in that behalfe. But (sayth the Courte 17. E. 4. 4.) if a man will demaunde the Peace, because hée is in feare that an other man will take & imprison him, it ought not to bée granted: and one yéeldeth the reasõ to be, because he may haue a Writ *de homine replegiando*, or an Action of false imprisonment, and may thereby recouer the damages of his imprisonment.

For what causes *Suertie* of the Peace may bee required.

The same reason might bée made against the demaunde of the Peace, where a man is threatned with Batterie, and yet it is cleare, that in suche a case the Suertie of Peace ought not to bée denyed him: & truly to

to threaten imprisonmente, is within the words *Minas de corporibus*, no lesse than Batterie it self, and like harme may happen by hard imprisonment, & cruel beating. It shal be good therfore to enquire of this matter.

How *Suertie* of the Peace is to be required.

The Peace being thus for good cause required, it is the common maner to exacte an Oath of the partie, wherby the Iustice may bee the better enformed and led to thinke, that the partie doth not ask it for malitious veration of an other, but of very feare, and for the needfull safetie of him selfe and his. And M.Fitzh. (in his Nat.Bre.Fol.79.) laboreth to shew, that the Iustices of the Peace ought not (without such an Oath) to graunt this Suertie at the suite of any man: For as much as not onely the Iudges of the Kings Bench doe yet take an Othe in suche case, but the auntiente course of the Lawe was such in the Chauncerie it self also, although it bee nowe a dayes otherwise vsed there. And that a Iustice may in this case the better iudge of this Feare, let him harken what M.Bracton (Fol.16.) saith: *Metus est* (saith hee) *præsentis, vel futuri periculi causa, mentis trepidatio: talis enim debet esse metus, qui in se contineat mortis periculum, vel corporis cruciatum.* And therfore, if a Iustice of the Peace, doe perceiue, that the Peace is demaunded

By *Oathe.*

against

againſt ſuch a perſon, as for his impotencie is not like to breake the Peace, hée may ſafely deny it, ſaith M. Marrow: But *Satius eſt peccare in alteram partem*, as I ſuppoſe, leaſte (if hée bée ſlaine that demaunded it) the Iuſtice bée worthily blamed, for that hée prouided not for his life and ſafetie: beſides all which, the common forme of the Recognuſance, is to binde a man from procuring hurte, the which any impotent man is able enough to do.

By what meanes *Suertie* of the Peace ſhall be enioyned.

It reſteth, that I ſhewe, by what meane this Suertie may bée enioined: and that is, either by Worde, or by Writing vnder Seale. For a Iuſtice of the Peace may by word only commaunde a man (being in his preſence) to finde Suertie of the Peace: 9.E.4.3. for, ſeing that hée is a Iudge of Recorde (ſaith M. Fitzh. Fol. 8.) his Precept by mouth is ſtronger than his Precept in writing.

By *Worde.*

So, if the Peace bée demaunded againſte one that is in his preſence, hée may commaunde the Shirife, or other knowen Officer, or his owne ſeruant (if they be then preſent alſo) to arreſte the partie to finde this Suertie, 14.H.7.8: & Mar. But, if either the Officer, Seruant, or Partie, bée abſent, then it is requiſite to make a Warrant (or Precept)

By *Writing.*

cept) in writing: The forme whereof may bee thus in English: for I see no cause yet why it should be directed in Latine to a Constable, or Borsholder, that (by al presumption) understandeth no Latine.

Kanc.

The *Precept* for the Peace.

ELIZABETH by the grace of GOD, &c. To our Shirife of *Kent*, the Constables of the Hundred of *Wroteham*, the Borsholder of the Towne of *Ightham*, and to al and singular our Bailifes, and other our Ministers in the sayd Countie, as wel within liberties as without, greeting: For as much as *A. B.* of *Ightham* aforesaide, Yeoman, hath personally come before G. MVLTON of the said towne Esquire, one of our Iustices of the Peace within the said Countie, and hath taken a corporal Oathe, that he is afraide that one *C.D.* of *Shipborne*, in the sayde Countie Yeoman, wil beate, wound, maiheme, or kil him, or burne his houses, & hath therwithal prayed suertie of the Peace against the saide *C.D.* Therfore wee commaunde and charge you iointly and seuerally, that immediately vpon the receipt heerof, you cause the saide *C.D.* to come before the sayd *G.M.* or some other of our sayd Iustices, to finde sufficient Suretie and Mainprise for our Peace, to bee kept towardes vs, and all our liege people, and

All, or any one of these causes may suffise.

and chiefly towardes the said *A.B.* that is to say, that he the sayde *C.D.* shall not doe, nor by any meanes procure or cause to be done, any of the sayde euilles, to any of our sayde people, and especially to the sayd *A.B.* And if he the said *C.D.* shal refuse thus to do, that then you him safely conuey, or cause to bee safely conueyed, to our next pryson in the sayde Countie, there to remaine vntill hee shall willinglye doe the same: So that hee may be before our sayd Iustices, at the next generall Sessions of the Peace to be holden at *M.* in the sayde Countie, then and there readie to answere vnto vs for his contempt in this behalfe. And see, that you certifie your doing in the premises to our sayd Iustices at the sayde Sessions, bringing then thither this Precept with you. Witnesse the sayde *G.M.* at *Ightham* aforesayde, the fourth day of August, in the three & twentieth yeare of our raigne.

Or thus, in the name of the Iustice himselfe, *Mutatis mutandis.*

GEORGE MVLTON Esquire, one of the Iustices of the Peace of our Soueraigne Lady the Queene, within the sayde Countie, to the Shirife, &c. greeting.

Forasmuch

Foraſmuche as *A.B.* &c. hath perſonally come before me,&c. Theſe ſhal be therfore, on the behalfe,and in the name of our ſayd ſoueraigne Lady, to commaund you iointly,&c. to come before mee, or one other of hir Maieſties ſayde Iuſtices of the Peace in the ſayde Countie, &c. Giuen vnder my Seale, at *Ightham* aforeſayde,&c.

It is méet,that the Precept for the Peace do expreſly containe the cauſe of the Peace within it: for otherwiſe, how can the Officer or Partie, take knowledge that Suertie muſt bée prouided for it? Yea (by the way let mée ſay it) euery Precept made by a Iuſtice of the Peace) ought to comprehende the ſpeciall matter vppon which it proceedeth, euen as all the Queenes Writtes doe beare their proper cauſe in their mouth with them.

And as for the Forme that is nowe commonly vſed (To aunſweare to ſuch things as ſhall be obiected), it was not fetched out of the olde and learned Precedentes, but lately brought in by ſuch as eyther knewe not, or cared not what they writte.

The Warrant of the Peace is the better alſo, if it beare Date of the place where it was made: for if a man bée to pleade ſuche a Precepte for his excuſe in an Action of falſe

falſe impriſonment brought againſte him, he ought (*in his* Plea) to ſhewe the place where the Warrant was made 14.H.8.18.

And this Precept may alſo bée directed to any indifferent perſon, by name, though he bée no Officer at all: for ſo it ſéemeth to bée permitted in the Oath of the Iuſtices of the Peace, and ſo is that Booke alſo 14.H.8.18.

The commaunding of Suertie of the Peace hath thus appeared: and nowe the execution, and bringing of that commandement to effect, muſt nexte bée diſcloſed. How the commaundemente of the *Peace* ſhal bee executed.

The execution of this Precept ſtandeth, partely in ſeruing the Precept it ſelf: and partely in taking the Recognuſance, if the partie doe come with Suerties, and that there bée no let in the way.

And becauſe (for the moſt part) there is but one and the ſame maner of doing, whether the Precept come from the Iuſtice of the Peace, as he is a Miniſter or as hée is a Iudge, I alſo will handle them togither, noting by the way, thoſe few differences that ſhall ariſe betwéene them.

If ſuch a Precept bée made iointly to twaine, yet the one alone may ſerue it: If it be directed to the Shirife, he may commande his Bayliſe, Vnderſhirife, or other (ſworne and knowne) Officer to ſerue it, without The ſeruing of the *Precept* for the Peace.

writing any Precept. But if hée will commaunde another man (that is no such Officer) to serue it, hée must giue him a written Precept, for otherwise a Writ of false imprisonment wil lie for the Arrest. And if it be directed to the Baylife, or to a seruant of a Iustice of the Peace, or other stränger, they must serue it them selues, for they can commaunde none other to doe it, neyther by worde nor Precept, Mar.

A sworne and knowen Officer néedeth not to shew this Warrant when hée doth serue it vpon a man, 8.E.4.14:& 20.H.7.13, &c. for his Office doth after a sort auctorize him. But if the Iustice will set his seruaunt to serue it, that seruaunt muste shewe the Warrant (if the partie demaunde it) and otherwise the partie may make resistance, 8.E.4.14.

A Iustice of the Peace (saith M. Brooke, *Titulo* Peace,9.) may make this Warrant returnable before himself, and the Baylife needeth not to carry the party before any other Iustice: But Iudge Fineux (21.H.7.20) saith, that if a Iustice of the Peace doe make a Warrant of the Peace *Ex Officio*, (that is) without any Writte of *Supplicauit* awarded, then the partie may chose to appeare before him, or any other Iustice in the Shire, and that

that he shall punishe the Baylife in false imprisonment, if he do otherwise compel him: But otherwise it is in the execution of the Writ of *Supplicauit*: for he, to whose hands it first cõmeth, is auctorized to execute and returne the Writ alone. And therupon M. Fitz (in his Nat. Br. Fo. 81.) affirmeth, that if such a Writ of *Supplicauit* bee deliuered to the Shirife, then he may both execute it alone, and also take Suertie by Recognusaunce (though otherwise being but a Conseruator he could not do it) because ꝑ Writ doth enable him so to do: yet the opinion of Littleton 9. E. 4. 31 is to the contrary.

The Officer ought also to require the partie to come and find Suerty of the peace before that he do arrest him, by the opinion 5. E. 4. 13 And in truth, the common forme of the Precept is, And if he refuse so to doe, that then he shal conuey him to the Gaole: and therefore, if he wil willingly come and finde Suertie, the Officer may neyther absolutely arrest him, nor take any fee of him.

And this may be the cause, that when one commeth vpon such a Warrant to a Iustice of the Peace to finde such Suertie, the Iustice needeth not againe to demaunde Suertie of him, but may commit him, if he do not offer Suertie as the opinion is, 14. H. 7. 9.

If a Bailife do arreſt a man for the peace, before that he haue any Warrant, and then afterward do procure a Warrant for it, this is vnlawfully done, and will not excuſe him in an action of falſe impriſonment, *ibidem*. But if the Baylife do cauſe one by force of a Warrant to come and finde Suertie of the Peace, and when the partie is brought, the Iuſtice will not bynde him, yet the Baylife is excuſed. 21.H.7.22.

If ſuertie of the Peace bee required at the handes of a Iuſtice of the Peace (that dwelleth out of the Countie) againſte a man within the Countie, the Iuſtice may graunt a Precept to be ſerued in the Countie, but when the partie ſhall be therevpon warned and commaunded to finde Suretie, the Officer may not carie him out of the Countie to the Iuſtice of Peace that made the Warrant, Marr. For, a Iuſtice of the Peace hath no auctoritie, but in the Countie where he is Iuſtice: by 13.E.4.8. & *Coment. Plowd.*37. and therefore it may be doubted alſo, whether ſuch a Warrant be good or no. The Caſe was there, that a Iuſtice of Peace in one Countie purſued a Felon, and toke him in an other Countie, wherupon it was holden, that he ought to be committed to the Gaole of the Countie wherein he was taken, and not

not of the Countie, wherein he which toke him was a Iustice, for that, he (being out of his Countie) had no more auctoritie, than a priuate man. But yet the Baylife may not dispute the sufficiencie or insufficiencie of suche a Warrant because hée that awardeth it is a Iudge of Recorde: 14 H. 8. 18.

That which hath bene hitherto sayde, is of the execution of the former parte of the Warrant for the Peace, that is to saye, to warn and cause the partie to come and find Suerty for the Peace: But if it fal out, that he refuse to come and put in such Suertye, then may the Officer, by vertue of his Warrant conuay him to prison. For (if you remember) the wordes are, And if he shal refuse, then. &c. And now for our better instruction, let vs sée what an Arrest is.

What an Arrest is.

Budee in his Greeke Commentaries, is of the opinion, that the French word (Arrest) whiche with them signifieth a Decree, or Iudgement of a Court, toke beginning of the Greeke ἄρεσον that is, *placitum*: and (as we might say) the pleasure (or will) of a Court.

And albeit that it were not out of our way, to thinke that it is called Arrest, because it stayeth (or resteth) the partie, yet I beléeue rather that we receiued the name from the Normane lawes, because wée vse

it in the same sence wyth them: For commonly wyth vs an Arrest is taken for the execution of the commaundement of some Court, or of some Officer in Iustice. But howsoeuer the name beganne, An Arrest is a certaine restraint of a mans person, depriuing it of his own wil and libertie, and binding it to become obedient to the will of the Lawe: and it may bée called the beginning of Imprisonment. The Preceptes and Writs of the higher Courtes of Lawe, do vse to expresse it by two sundry wordes, as *Capias* and *Attachias*, which signifie, to take (or catch) hold of a man. But this our Precept noteth it by the wordes *Duci facias*, (cause him to bée conueyed, &c.) for that the Officer hath (after a sorte) taken him before, in that he commeth vnto him, and requireth him to goe to some Iustice of the Peace.

To this Arrest al Lay persons (vnder the degrée of Lords or Péeres of the Realme) be subiect: And Ecclesiastical persons (if they bée not attendant vpon diuine seruice) may bée arrested for the Peace also, Mar.

The ende therefore is, that if the partie will not come to finde Suertie of the Peace, the Officer may (vpon that Warrant) arrest and carry him to the Gaole, where hée shall remaine, vntill that hée will freely offer, and finde

finde it.

But it is good to bee enquired whether the Releaſe, or Death of hym that prayed the Peace, wil not bee ſufficient cauſe to deliuer ſuch a priſoner: and if it ſhal bee, then by what order hee ſhall bee deliuered. For as it ſemeth to ſome, that any Iuſtice of the Peace, may (vpon his offer) take the Suertie, and deliuer him: ſo it may bee ſome doubt, whether hee may bee deliuered (vpon the death, or releaſe of the partie) wythout the helpe of a Seſsions, or Gaole deliuerie.

Deliuerie of him that is impriſoned, for refuſing to find *Suertie.*

It appeareth 4.E.4.16. and by the opinion of Brian, 2.H.7.2.& 4. that if ſuch an impriſoned perſon had a ſuite hanging in the Common place aforehand, he might by a Writ of Priuilege be diſcharged of ẏ ſame, if the partie, at whoſe ſute he was arreſted for the Peace, were not ready in Court at the day of the returne of the Writ when hee ſhould bee called to pray the Suerty of the Peace there againe againſt him: and he ſayeth, that it had beene alwaies their common courſe ſo to do: but other there were of a contrarie opinion, & it ſeemeth a harde caſe, that without any ſufficiẽt notice of ſuch a remouing of the partie, a man ſhould be defeated of Suertie for the Peace.

But now, if the partie ſhal yelde to finde

To what Iustice he that is arrested, may goe.

Suertie of the Peace, then may he at his libertie (if the Precept procéde *Ex officio*, and without the Writ of *Supplicauit*) go to any Iustice of the Peace, to offer this Suertie.

Herevpon it happeneth often, that suche persons, (chosing rather to be bound by any other, than him that maketh the Warrant) do offer themselues, and become bound before some other Iustice, and doe withall procure a *Supersedeas* from him to bée discharged of any other Arrest to be made. Yea, and many times (hearing of such Preceptes, and misliking to bée bounde in the Countrie) they go vp to *Westminster*, and giue Suertie of the Peace there, eyther in the Kings Bench for a time only (as the maner of that Court is) or in the Chauncerie for euer (as they vse it there) and doe thereupon procure a *Supersedeas* from the Courte where they are bounde, to close the handes of the Countrie Iustices. And therefore it is not amisse to say somewhat of this matter of *Supersedeas* also.

Supersedeas, by a *Iustice* of the Peace.

If then a Iustice of the Peace will (by a *Supersedeas*) discharge a Precepte of the Peace that was made by his fellow Iustice he shal do wel to take the Recognusance according to the day of apparance (if ther be any) & after the forme of the former Precept.

For

For, as it is good reason, that hauing taken Suertie for the Peace, he may by his *Supersedeas* saue the partie from finding other Suertie for the same cause: So is it not reasonable, that he should giue the partie anye other day of apparaunce than the Precept had, and thereby discharge a matter of Recorde that was made by one of equall authoritie with him. Fit. Fo. 9 Much lesse may the *Supersedeas* of a Iustice of the Peace, discharge a Precept of his fellowe Iustice proceeding by vertue of a *Supplicavit*, for that it is of an higher auctoritie. Mar.

This *Supersedeas* sent by a Iustice of the Peace, is sufficiēt, although it neither name the Suerties, nor containe the summes in which they are bound: But yet it is the better forme to expresse them both, as well because the higher Courts vse so to do, as also that if the Bailife, Constable, or other Officer (to whome it is deliuered) bee called at the next Sessions by the suite of him that sought to haue the Peace, to shew how hee hath executed his Warrant, and doe come in and shew forth the *Supersedeas* then the partie that is bound maye be called thereupon at the day that appeareth to be limitted vnto him by the *Supersedeas*, for it is vnder the seale of a Iustice, & doth testifye that

the partie is bound and hath founde suertie, to appeare at a certeine day, and if he make default, that being Recorded, shal bée sufficient to cause him to forfeyte the penalty of the Recognusance, although the Iustice that awarded it, shall omitte to bring in the Recognusance it selfe, according as he ought now to doe by the Statute, 3. H. 7. ca. 1. And this may be gathered vpon the opinion 2. H. 7. 1. and may also be séene by this forme of the *Supersedeas* here vnder written.

The forme of a *Supersedeas* by a *Iustice* of the Peace.

GEORGE MVLTON, one of the Iustices of the Peace of our Soueraigne Lady the Quenes Maiesty within the Countie of *Kent*, To the Shirife, Baylifes, Constables, Borsholders, Ministers, and other the Faithfull subiects of our sayde Soueraigne Ladie within the saide Countie, and to euerie of them, sendeth greeting: For as much as *A. B.* of &c. Yeoman, hath personally come before me at *Ightham* &c. and hath found sufficient suertie, that is to say, *C. D.* & *E. F.* &c. Yeomen, either of the which hath vndertaken for the said *A. B.* vnder the paine of xx. *li.* and he the said *A. B.* hath vndertaken for himselfe vnder the paine of xl. *li.* that he the saide *A. B.* shall well, and truely keepe the Peace, towards our said soueraigne Ladie, &

all

all hir liege people, and ſpecially towardes *G.H.*&c. Yeoman,& alſo that he ſhal perſonally apeare before the Iuſtices of the Peace of our ſaid ſoueraigne Lady within the ſaid Countie,at the next general Seſsions of the Peace to be holden at *M.* there: Therefore, on the behalfe of our ſaid ſoueraigne Ladie, I commaund you,& euerie of you, that yee vtterly forbeare and ſurceaſe,to arreſt,take, impriſon,or otherwiſe by any meanes (for the ſaide occaſion) to moleſt, the ſaide *A.B.* And that if you haue (for the ſaid occaſion, & for none other) takē,or impriſoned him, that then you do cauſe him to be delyuered and ſet at libertie, wythout further delay. Yeouen at *Ighthā* aforeſaid vnder my ſeale, this laſt day of Iuly in the xxiij. yeare,&c.

Which alſo may bée in the name of the Prince, and vnder the Teſte of the Iuſtice of the Peace, thus:

ELIZABETH, by the grace of God, &c. To the Shirife,&c. greeting: For as much as *A.B.* hath come before *G. Multon*, one of our Iuſtices of Peace within our ſaid coūtie,and hath found, &c. We therefore commaunde you and euerie of you, that ye forbeare,&c. Witneſſe the ſaide *G.M.* at *Ighthā* aforeſaide,&c.

Thus

Thus muche of the *Superſedeas* iſſuing from a Iuſtice of the Peace, the which ought to with-holde and ſtay the proceeding of his fellowe Iuſtices in the ſayde cauſe: in ſo muche that if anye Officer by any of their Warrants, hauing this *Superſedeas* deliuered vnto him, wil neuertheleſſe vrge the partie to finde new Suerty for the Peace, he may refuſe to giue it, and (if he bee committed to priſon for ſuch his refuſal) he may (as I think) haue his action of Falſe impriſonmēt againſt the Officer vppon the ſame.

Superſedeas out of an higher Courte.

Much more then wil a *Superſedeas*, that commeth out of the Chauncerie, or Kings Bench, or from anye Iuſtice of the Kings Bench, diſcharge ſuch a Precept for the peace awarded from any Iuſtice of the Peace.

And therefore, if the Iuſtice of Peace (to whom ſuch a *Superſedeas* ſhal be deliuered) wil not therupon surceaſe, an Attachement may be awarded againſt him for his cōtēpt, and he may bee impriſoned, and fined for it.

It is good counſel therfore, that M. Fitz. (in his Na.Br.Fo.238.) giueth, where he willeth the Iuſtices of Peace (after ſuch a *Superſedeas* receiued) to forbeare to make anye warrant to arreſt the party, and if they haue awarded it, then to make their owne *Superſedeas* to the Shirife and other Officers, ther-

by

by cõmaunding thẽ to surcease to execute it.

This impediment of *Supersedeas*, (lying after this sort as you haue seene in the way to the Iustice of the Peace) thus passed ouer, let vs nowe suppose the partie serued with the Precept, to come before some Iustice of the Peace, and let vs enter into the taking of the Recognusance of him: for that is one part of the execution of the Warrant for the Peace, and may doe seruice whether the partie come to him that made the Precept or to any other. The taking of the *Recognusance* for the Peace.

If the Iustice of the Peace deale in this matter as a Iudge, and by vertue of his Commission, then the number of the Suerties, the summe of their bonde, their sufficiencie in goods, or landes, the time how long the partie shal be bounde, and suche other circumstances, are referred wholie to his owne consideration: and if he be deceiued in the abilitie of the Suerties, he may compell the partie to put in others: Mar. for the auoiding of which deceite, also the Iustices of the Common Place (7.H.6.25.) did examine the abilitie of the Suerties vpõ their Oathes. &c.

The commune manner is, to take two Suerties, besides the partie himselfe: and good reason it is that those should be such as haue their names registred in the Booke of

of Subsidie, for albeit that here and there some may be sufficient that were not assessed to the Queene, yet it standeth not wel together, that hée should become bound to the Prince in x. or xx. poundes, that was not in the Subsidie found worth any thing at all.

But if he commaunde the Peace as a Minister in execution of the Writ of *Supplicavit*, then must he behaue himselfe as the writ it selfe directeth him: and that hath no béene alwayes after one manner: for some tourme commaundeth him to take sufficient Manucaptors in any paine (or sum) to bée reasonably set by himselfe, so that hée wil be answerable for it at his owne peril: and some willeth him to take sufficient Suertie in a sum certainly prescribed vnto him, as a hundred pounds in all, or euerye of them in twentye poundes, as it may bée séene at large, in the Register of Writtes. Fo. 89.

A Iustice of the Peace (saith Maister Marrow) maye take this Suertie by a Gage, or Pledge, which shal not be forfeited thereby, but pauned onely, so that the party shal (vnder a certaine peine) kéepe the Peace, whiche peine he shall forfeite, if he breake the Peace. And (by his opinion) a Iustice of the Peace may also take this Suertie by an obligation made to him selfe, by the name of

Iustice

Iuſtice of the Peace: For ſo ſhall it be (ſaith he) *ad vſum Domini Regis*: But if it were made vnto him without his name of Iuſtice of the Peace, that then it coulde not bée to the vſe of the King, vnleſſe it had the words, *ad vſum Domini Regis*: M. Fitzh. on the other ſide (in his Nat. Bre. Fo. 81.) holdeth, that ſuch an Obligation taken to the King, by a Iuſtice of the Peace, is nothing worth: for a man cannot be bound to the Prince (ſayth he) but only by matter of Recorde, vnleſſe he will afterward come into a Court of Recorde, and confeſſe it to bée his déede, and pray that it may be Enrolled there.

But the new Statute (33. H. 8. ca. 39.) hath made a plaine law in theſe caſes, & willeth, that all Obligations and Specialities (made for any cauſe touching the King) ſhall bee made in his own name, by the words *Domino Regi*, and to none other perſon to hys vſe. & it ordaineth further, that ſuch bondes ſhal be of the nature of a Statute Staple, and that if any perſō take any obligation otherwiſe, he ſhal be impriſoned at the pleaſure of the King, or of his honorable Counſell.

The ſafe way therfore, is to take this Suertie by Recognuſance, as is cōmonly vſed, and that alſo by the words *Dominæ Reginæ*: & thē (vpon the forfeiture therof) the Queene ſhall

shal haue execution accordingly.

Now, if a Recognusance bee ment to bee taken for the Peace, by a Iustice of the Peace, and yet doe not containe within it or in the condition thereof, that it was taken For the keeping of the Peace, it seemeth to bee voide, as being then taken *Coram non Iudice*: because a Iustice of the Peace hath not power to take Recognusances generally but for matters concerning his Office specially. And therefore Maister Marrow addeth further, that if the Recognusance bee, That the Recognusor shal not maime, nor beate A. yet it is not good, because it ought to bee For the keeping of the Peace, and that may bee broken otherwise, as by burning ỹ house of A. or by such like misdemeanour.

Although this Recognusance do not comprehende any day, in which the Recognusor shall appeare, but bee generally to keepe the Peace, yet it is good inough in Law: for the chiefe matter is, The keeping of the Peace, & the time is referred to the discreation of ỹ Iustice, and so is it (by Maister Marrow) if a day of his apparance be put into the Recognusance, and no person to be named in it, before whome the partie ought to appeare: for he may thẽ (sayth he) appeare where he wil before that Iustice of the Peace which toke

the

the Recognusance of him.

And if the Recognusance be in xx.*lb* to be leuied onely of the goods, or onelie of the landes, of the Recognusor, it seemeth to bee good ynough: for peraduenture the wordes, Of the goods onelie, or Landes onelie, shall bee taken to bee voide, seeing that the verie acknowledgement of the sum of xx.*lb*. (before a Iudge enabled to take it) both maketh it a debte, and implyeth the ordinarie meane of Law to come by it.

If this Recognusance be taken, To keepe the Peace against one speciall partie onely, M. Marrow thinketh it good: but aduize well of it, for the wordes in the Commission of the Peace bee, to take suertie *Erga nos, & populum nostrum.*

But, for the better eschewing of Error & hard dealing in making this Recognusance of the Peace, it is good to vse the receiued forme, which is thus:

The forme of a *Recognusance* for the Peace.

M*Emorandum, quod* 4. *die Iulij, Anno regni Dominæ nostræ Elizab. dei gratia, &c.* 23. R. P. *de* Ightham *in comitatu prædict.* Yeoman *in propria persona sua venit coram me* Georgio Multon, *vno Iusticiariorum dictæ Dominæ Reginæ ad pacem in dicto comitatu conseruandam assignatorũ, et assumpsit pro seipso sub pœna xx.lb. Et* H. I. *de* L. *in comitatu prædict.* Yeoman: *Et* I.

I. F. *de*

F.de M. *in eodem comitatu* Husbandman *tunc & ibidem in propriis personis suis similiter venerunt, & manuceperunt pro prædicto* R. P. (*viz.*) *quilibet eorum separatim sub pœna* 100. *s. quod idem* R. P. *personaliter comparebit corã Iusticiarijs dictæ Dominæ Reg: ad pacem ad proximam generalem Sessionem pacis in cõmitatu prædicto apud* Maidstone *tenendam, ad faciendum & recipiendum quod ei per curiam tunc & ibidem iniungetur: Et quod ipse interim pacem dictæ Dominæ Reg: custodiet erga ipsam Dominã Reg: & cunctum populum suum, et præcipuè versus* M.N. *de* Ightham *prædicta* Yeoman, *Et quod damnũ vel malum aliquod corporale aut grauamen prefato* M.N. (*Nec alicui de populo dictæ Dominæ Reginæ, quod in læsionẽ aut perturbationem pacis ipsius Dominæ Reg: seu præfati* M.N. *cedere valeat*) *quouismodo non faciet, nec fieri procurabit: Quam quidem summam xx. lb. prædict.* R.P. *& quilibet manucaptorum prædictorum prædicta separales summas* 100. *solid. recognouerunt se debere dictæ Dom. Reginæ, de terris & tenementis, bonis & catallis suis, & cuiuslibet eorum ad opus dictæ Dom. Reg: fieri & leuari, ad quorumcunq; manus deuenerint, si cõtigerit ipsum* R.P. *premissa vel eorum aliquod in aliquo infringere, & inde legittimo modo conuinci. In cuius rei testimonium, ego prædictus* G.M. *sigillum meum apposui. Dat. apud* Ightã *prædict die & An. supradictis.*

Or thus, a little different in forme.

MEmorãdũ q̃ 4. die &c. A.B. de Ightã *&c. Et C.D. de eadẽ* Yeomẽ, *venerunt corã me G.M. &c. & Manuceperunt p̃ I.S. nuper de L. &c. quod ipse personaliter comparebit coram me præfato G.M. vel socijs meis Iusticiarijs pacis D. Reg: ad proximam generalem Sessionem &c. Et quod ipse interim geret pacẽ erga cunctum populũ Dom. Reginæ, & præcipuè erga R B. &c. (viz.) quilibet manucaptorum prædictorũ sub pœna. 20. ℔. Et prædictus. I.S. manucepit pro seipso sub pœna 40. ℔. Quam quidam summam 40. ℔. prædictus I.S & quilibet manucaptorum prædictorum dictã summam 20. ℔. recognouerunt, &c.*

And this may be wel done also, by a single Recognusance in Latine, with a conditiõ added in English, for the kéeping of the Peace, and for the daye and place of the parties apparance at the Quarter Sessions.

The Suertie (or Recognusance) of ỹ Peace, thus commaunded, and accomplished, order draweth me to disclose, how ỹ Iustice of the Peace is to demeane himself with it. What shal be done, with the *Recognusance.*

If the Suertie were taken, by vertue of a *Supplicauit* then must the Iustice of ỹ Peace (being in this case but a Minister) make returne of the Writ, and a Certificat of his doing, into the Court frõ whence the *Supplicauit* did proceed: for helpe wherin, I will set him downe that which I haue scene put in The returne of a *Supplicauit.*

practise vpon a Writ of that kinde.

First let him note vpon the backe of the *Supplicauit* thus:

Executio istius Breuis, patet in quadam Scedula eidem Breui annexa.

Then may that Scedule be thus:

Ego Wilhelmus Lambarde, *vnus custodum pacis Domine Regine in comitatu Kancie, certifico in Cancellariam dicte Domine Reg.me virtute istius breuis (mihi per* A. B. *in eodem breui nominatum primo deliberati) personaliter coram me (tali die & loco) venire feciſſe Thom: R. in dicto breui nominatum, ac eundem Tho: ad ſufficientem ſecuritatem, & manucaptores pacis inueniendum, ſecundum formã dicti breuis, viz.* (as the Writ shal appoint, whiche is of diuers formes, as I tolde you before) *Compuliſſe: In cuius rei teſtimonium huic præſenti Certificationi meæ ſigillum meum apposui: Dat. apud D. prædictam, in comitatu prædicto, 5. die Iulij anno regni dicte Domine noſtre Elizab. dei gratia. &c. 23.*

The returne of a *Certiorari*.

And if a *Certiorari* bee directed out of the Chauncerie to the Iustice of the Peace for this Recognuſance, because it was not ſente vp togither with the Certificat, (as there was no neceſſitie that it ſhoulde) then that Writ also may be thus answered.

Vpon the backe of the Writ, thus:

Virtu-

Virtute istius breuis ego W. L. *vnus custodum pacis Dominæ Reginæ in commitatu K. tenorem securitatis pacis (vnde infra fit mentio) dictæ dominæ Reginæ in Cancellariam suam sub sigillo meo distincte & aperte mitto, prout patet in Scedula huic breui consuta.*

The which Scedule may bee thus: *Memorandum, quod 20. die Iun. &c.* (reciting the whole Recognusance to the end therof.) Then, *In cuius rei testimonium ego predictus* W. L. *sigillum meum apposui. Dat. &c.*

And this may serue also, where a *Certiorari* is brought to a Iustice of the Peace, to remoue a Recognusance of the Peace taken by him *Ex officio*, without any such Writ of *Supplicanit*, as you maye reade in the Register. Fol. 90.

But if the Recognusãce be not thus remoued from the Iustice of ỹ Peace, thẽ may hee kéepe it till the *Certiorari* come to him for it.

The certifying of the *Recognusance* and release to the Sessions.

On the other side, if the Recognusaunce were taken by vertue of hys Office, then (whether it were by his owne discretion, or at the suite and desire of an other) he muste send, or bring it in at the next Sessions, to the *Custos Rotulorũ*, so that the Recognusor, may be there called, and if he make default, then the same default to bée recorded, as is appointed by the Statute. 3. H. 7. ca. 1.

And here againe, some difficulties doe arise, that may make the Iustice of Peace somtimes doubtful, how to holde, certify, or sende in the Recognusaunce. For sundrie meanes there are, by whiche this Recognusance of the Peace may (before anye forfeyture therof made) be after a sort discharged, and therfore let vs consider them apart, and withal giue some aduise what shall bee best to doe therein.

Release of the *Peace* by a *Iustice* of Peace.

The Iustice of Peace, that of his own motion compelleth one to giue Suertie of the Peace vntil a certain day, may by like discretion before that day release it, Fitzh. Fo. 10. And if it shoulde fortune to bee made to keepe the Peace generally, without any day limited, then would it bee construed that it was to continue during the life of the party bound, and then could no man release it, by Fitz. & 21.E.4.40. If (at the suite of A.) the Recognusance should be taken, To kepe the Peace against A onely, and none other, then may A. release it, either before the same Iustice, or any other that will certifie the Release. which certificate being of Record, will discharge it: but to release it by his deede, is nothing worth, Marr.

And so if it bee *versus cunctum populum, & praecipuè versus* A. yet may A. after that sorte re-

releaſe it (as I thinke) notwithſtanding the opinion 21. E. 4. 40: for, albeit that it ſeeme popular, ſo that others ſhould haue equal intereſt with A in it, yet was it taken ſpecially for his ſafetie, as the word *Præcipue* doth argue plain. And M. Brooke ſaith truly, that it is ſo vſed at this day.

But whether the Recognuſance be at the ſuite of A or by the meere motion of the Iuſtice in the behalfe of A the Queene can not releaſe or pardon it (before that it bee forfeited) both for the miſchiefe that maye come to A. thereby, (by Fineux his opinion 11. H. 7. 12.) and for that the Recognuſance beeing taken according to the commō forme, as is before ſet downe, it is not properlie a debte to the Queen vntil it be forfeited, as appeareth 11. H. 4. 43: 1, H. 7. 10. But being forfeited, ſhe (and none other) may pardon the forfeyture, for then it is become hir proper debte. Nowe in theſe caſes, ỹ Recognuſance maye not be Cancelled leaſt peraduẽture ỹ Peace was broken (and conſequently the Recognuſance forfeited) before the time of the Releaſe made, Fitzh. Fo. 10 and therfore it ſhall be beſt in ſuch caſes to ſend to the Seſſions the Recognuſance and the Releaſe togither: and that maye be done in a few Lines vnder the Recognuſance it ſelfe:

Firſte for the releaſe of the Iuſtice, thus: *Ego prafatus* G.M. *qui ſupra nominatum* A.B. *ad predictam ſecuritatem pacis inueniendam ex mea diſcretione compuli, eandem ſecuritatem pacis (quantum in me eſt) ex mea diſcretione* 1. *die Auguſt. &c. remiſi & relaxaui: In cuius rei teſtimonium, huic præſenti relaxationi meæ ſigillum meum apposui. Dat. &c.*

And for the releaſe of the Partie before the ſame Iuſtice that tooke it, thus:

Releaſe by the partie.

MEmorandum, quod primo die Auguſti, &c. prafatus C.D. *venit coram me prafato* G.M. *& gratis remiſit & relaxauit (quantum in ſe eſt) predictam ſecuritatem pacis per ipſum verſus ſupra nominatum* A.B. *petitam. In cuius rei teſtimonium, ego prafat.* G.M. *&c. Dat. &c.*

But if the releaſe be made before another Iuſtice whiche hath not the Recognuſance, then this later forme muſt be framed accordingly.

Certifying of the *Recognuſance*, & *Superſedeas*.

Furthermore, if a man be bounde before a Iuſtice of the Peace, to keepe the Peace againſt all the Queenes people, & to appeare at the next Quarter Seſsions, and doe afterward procure a *Superſedeas* out of the Chaūceric, teſtifying that he hathe founde ſuertie there againſte all the Queenes people forever,

ner, thys wil discharge his apparance at the Sessions, because the graunting of this *Superſedeas* is the Acte of the Quéene, whyche is the fountaine of Iustice, and controlleth all other auctoritie, Fitz. Fol. 9.

But if that *Superſedeas* should testifie, that he hath found Suertie in the Chauncerie, but onely vntill a certaine day (which day is after those Sessions) then M. Fitzh. thinketh, that his apparance at the Sessions shall not bée discharged by the *Superſedeas*. In bothe these cases also, I woulde aduise the Iustice of the Peace, to send in the Recognisaunce and the *Superſedeas* also, if it commeth to his hands, for peraduenture the Recognisance was broke̅ before the *Superſedeas* purchased: or, if it were not, yet he shal bée excused, and the Recognisor neuer a whit the more endangered thereby.

Lastly, ẏ death of the Prince dischargeth the Recognisance of ẏ Peace, 1. H. 7. 2. *Cur.* So doth the death of the Recognisor. and so also doth the death of hym, at whose suite it was taken, if so be, that it were made to kéepe the Peace against him alone.

But although the Mainpernours or Suerties die, yet the Recognisance liueth: for, if the Peace bée broke̅ after their deaths, their executors shal be charged with it, 21. E. 4. 40

Certifying of the *Recognisance*, though it bee discharged by death.

I.ii. Nei-

Neither (in the former cases) is the Recognusance discharged by such death, if it were forfeited before.

And therefore, here againe my counsell is, to sende in the Recognusance to the *Custos Rotulorum*: for otherwise, how shall the Iustice of Peace bee assured, that he doth not defraude the Queene of a forfeiture, that was growen vnto hir?

Causes of forfeiture, so that the partie shall be compelled to giue newe *Suerties.*

Thus haue I bothe boũd the partie to the Peace, & conueyed the Recognusance from the Iustice of the Peace to the *Custos Rotulorũ*, ready to be called vpon at the Quarter Sessions: So that I mighte forthwith proceede to treate of the good Abearing: But, bicause I haue tolde you (out of M. Mar. and 21.E.4.40.) that if the Recognusance of the Peace be forfeited, and that forfeiture bee leuied, so that the Recognusance is vtterlye determined, yet (of Discretion) the partie is to bee compelled to finde newe Suertie, or else to be sent to prison, because it appeareth euidently, that he hath broken the Peace. I thinke it fitte to runne swiftely ouer some few things that may enfourme a Iustice of the Peace concerning such forfeitures, to ẏ end, that he may therevpon compell the offendor accordingly.

The Condition of this Recognusance (of what

what good forme soeuer you make it) standeth vpon two points: the one for apparãce at a time, the other, for keeping the Peace in the meane while. Of the first of these I haue said somewhat already in this Chapiter: concerning the second point, this is generall, that whatsoeuer Acte is a breache of the Peace, the doing thereof doth also beget a forfeiture of the Recognusaunce that is made for keeping of the Peace: and what actes shall amount to a breach of the Peace, I will hereafter shew, in the nexte Chapiter of this Booke, where I shall (to another end) haue mæte place for it. In the meane space, take thus much here.

If a man be bound to kéepe the Peace against A and do afterward threaten A to his face, that he will beate him, he hath forfeited his Recognusaunce. And an Action of Trespasse lyeth at the Cõmon law against him that shall threaten one to beate him, as appeareth in diuers Booke cases 3.H.6.18: 37.H.6.20. and shall suppose it to bée *Contra pacem.* But otherwise it is, if A. bée not present at that threatning, by good opinion 18. E.4.28. yet if (in the absence of A.) he doeth threaten, that he will beate him, and then do afterwarde lie in awaite to beate him, hée hath in that case also broken his Recognusance 22.E.4.35. *Cur.* Like

Like forfeiture is it, if he that is bound, do but commaund or procure another to breake the Peace vpon any man, or to do any other vnlawfull acte againste the Peace, if that it bee done indeede 7. H. 4. 34. & Brooke Tit. Peace 20. *tempore* H.8.

Of the Suertie of the *good Abearing*, and where it lyeth.

For closing vp of this parte (concerning the Preuention of the breach of the Peace) it remaineth, that I entreate of the Suertie of good Abearing, which is of greate affinitie with that of the Peace, as being prouided for preseruation of the Peace, as that other is: for in the Commission of the Peace, they are both conueyed vnder this one tract of speach, (*Ad securitatem de pace, & bono gestu suo, erga nos & populum nostrum inueniendū*) against suche as doe threaten hurte to mens bodies, or Fier to their houses, which things are now commonly preuented by Suertie of the Peace onely.

And (2.H.7.2.) the Suertie of the good Abearing is sette forth to reste in thys pointe chiefly, That a man demeane hymselfe well in his porte, and company, dooing nothing that may be cause of the breach of the peace or of putting the people in feare, or trouble: and that it doth not consiste in the obseruation of things that concerne not the Peace: And that it should differ from Suertie of the Peace,

Peace, in this, that where the Peace is not brokē without an affray, or battery, or such like, this Suertie *de bono gestu*, may be broken by the number of a mans company, or by his or their weapons or harnesse. Herewithall also do certaine Precedentes of the Kings Bench agrée, which in Suertie of the good Abearing (taken at the sute of some one person) do mingle the words *Amodo bene segeret erga Dominum Regem, & cunctum populum suum, & præcipuè erga* T.B. with those other words that are commonly put in the Recognusance for the Peace, as in the newe Booke of Entrees Fol. 416. anye man maye plainely sée.

But all this notwithstanding, mée thinketh that a man maye reasonably affirme, that the Suertie of good Abearing shoulde not be restrained to so narrow bounds.

For first, the statute (34.E.3.c.1.) enableth the Wardeins of ỹ Peace, to take of all them that be not of good fame (where they shall be found) sufficient suertie & mainprise of their good abearing towardes the King and his people. So that if a man bée defamed, he may by vertue hereof be bound to his good Behaviour, at the discretion of the Wardens & Iustices of the Peace. But then the doubt resteth in thys, to understande concerning what

what matters this defamation must be, and that (as I thinke) may bee partely gathered out of the saide Statute also. For, after it hath firste giuen power to the Wardeins of the Peace, to arreste and chastice offendors (S. against the Peace, Riotors, & Barettors:) then it willeth them, to enquire of suche as hauing bene robbers beyonde the Sea, were come ouer hither, and would not labour as they were wont: and lastly, it auctorizeth them, to take Suertie of the good behauiour of such as be defamed, namely, (as I think) for any of those former offences for so it stãdeth wel togither, that thei shal both punish such as haue already so offended, & shal also prouide, that others shal not likewise offẽd.

Moreouer, it seemeth to me, that these statutes: first (1. Mar. Parl. 1. cap. 3.) whyche gaue this Suertie of good Abearing against suche as disturbed a Preacher: then (5. Eliza. ca. 21.) that prouideth the same againste the takers of fish in Pondes, or of Dere in Parkes: and lastly (23. Eliz. cap. 1.) whiche graunteth it against such as wilfully absent thẽselues frõ the Church by the space of 12. months, haue this meaning, that a partie (so bonnd) maye afterward forfeite his Recognusance, if hee eftsones offend against the saide Statutes.

Besides this, you may see (admitted by the opi-

opiniõ of ỹ Court. 13. H. 7. 10.) that if a mã in the night season, haũt a house that is suspected for Bawderie, or vse suspitious company, then may ỹ Constable arrest him to find suertie of his good Abearing. For, Bawderie is not mẽrely a spirituall offence, but mixed, and sounding somewhat against the Peace of the land 29. H. 8. 14. Fitzh. & 1. H. 7. 6. And therefore, it shall not be amisse at this day (in my slẽder opiniõ) to grant Suertie of ỹ good Abearing against him that is suspected to haue begottẽ a Bastard child: to ỹend that he may be forth cõming whẽ it shal bee borne: for otherwise, there will be no Putatiue father found, when that the two Iustices of the Peace, shall (after the birth, & by vertue of the Statute 18. Eliz. ca. 3.) come to take order for his punishment.

But for some aduise by the way in cõceiuing rightly this Suspition, marke what M. Bracton writeth: *Oritur suspitio ex fama, & ex fama & suspitione, oritur grauis præsumptio: Fama verò suspitionem inducens, oriri debet apud bonos & graues, idq; non semel, sed sapius. Oritur etiã suspitio ex facto præcedente, cui standum est donec probetur contrariũ: nã qui semel est malus, sæper præsumitur esse malus, in eodẽ genere mali.*

But the further that thys bonde of the good Abearing doth extẽd, the more regard there

there ought to bée in the awarding of it: and therfore, although the Iustices of the Peace haue power to grant it, either by their own Discretion, or vppon the Complaint of others, euen as they may that of the Peace: yet I wilshe rather, that they doe not commaunde it, but onely vppon sufficient cause séene to themselues, or vpon the sute & complaint of diuers, and the same verye honest and credible persons.

And here, forasmuch as one Iustice of the Peace (alone, and out of the Sessions) maye (both by the first Clause of the Commission, & also by the opinion of M. Fit. & 9. E. 4. 3.) grant this suertie of the good Abearing, (although the common maner be, that two such Iustices doe ioine in that doing, whereof also M. Fitzh. hath very good liking) I wyll not sticke to set forth the common formes, as well of the Precept, as of the Recognusance for the same: wherein, if I shal vse the names of two Iustices, you muste take that also to bée done according to the common fashion, and not of any necessitie in Lawe. For, as I woulde more gladly vse the assistance of a fellow Iustice in this behalfe, if I may conueniently haue it: so (if that may not be had) I would not greatly feare (when good cause shal require) to vndertake the

the thing my selfe alone.

The Precept may haue this course.

GEORGE MVLTON, and WILLIAM LAMBARD, two of the Iustices of the Peace of our Souereigne Lady the Queenes Maiestie, in the Countie of *Kent*, To the Shirife of the said County, to the Constables of the Hundred of *Wrotcham*, and to the Borsholder of the Towne of *Shipborne*, in the sayd Countie, & to euery of them, greeting: For as much as *A. B.* of *Shipborne* aforesayd, is not of good fame, nor of honest conuersation (but an euill doer, Riottour, Barrettour, and perturber of the Peace of our said Soueraigne Ladie) as we are giuen to vnderstand by the reporte of sundrie credible persons. Therefore, on the behalfe of our said Soueraigne Ladie we commaund you and euery of you, that you cause the sayd *A.* B. to come before vs, or some others of our fellow Iustices, to finde sufficient suertie and mainprise for his good abearing towards our sayd Soueraigne Ladie, and all her liege people. And if hee shall refuse so to doe, &c as in the Precepte of the Peace with a verye little chaunge.

The Precept of the good Abearing.

Any one of these, is sufficient cause.

The vsuall Recognusance hath this forme.

The Recognusance for the good *Abearing.*

MEmorandum, quòd 5. die mensis Iulij, Anno regni Elizab. &c. 23. *venit coram nobis* Georgio Multon, & Wilhelmo Lambard, *& cætera*, vt antea in Recognitione pacis, vsque ad hoc: *Quod idem* R.G. *personaliter comparebit coram Iusticiarijs dictæ Dominæ Reginæ ad Pacem, &c. ad proximam generalem Sessionem, &c. Et quòd ipse interim se bene geret erga Dominam Reginam & cunctum populum suum, & præcipuè erga* I.B. *de* C. *&c. Et quod ipse non inferet, nec inferri procurabit, per se nec per alios, damnum aliquod seu grauamen præfato* I. B. *seu alicui de populo ipsius Dominæ Reginæ de corporibus suis, per insidias, insultus, seu aliquo alio modo, quod in læsionem seu perturbationem pacis dictæ Dominæ Reginæ cedere valeat quomismodo: videlicet vterque prædictorum* H. C. & I.S. *sub pœna* 100. *lb Et prædictus* R.G. *sub pœna* 200. *lb: quas quidem separales summas* 100. *lb. vterque prædictorum* H. C. *&* I.S. *(vt prædicitur) per se, ac prædictus* R.G. *dictas*, 200. *lb. recognouerunt se debere dictæ Dominæ Reginæ, de terris, & tenementis, bonis & catallis suis, & cuiuslibet eorum, ad opus ipsius dictæ Dominæ Reginæ, fieri & leuari, Si contingat præfatum* R.G. *in aliquo præmissorum deficere, & inde legitimo modo conuinci, &c.*

Di

Or by a simple Recognusance, with this Condition endorsed, or vnder written.

CONditio Recognitionis prædictæ talis est, Quod si prædictus R.G. *imposterum se bene geret, & pacem Dominæ Reginæ conseruabit, erga dictam Dominam Reginam, et cunctum populum suum, et nullum damnum corperale &c. Extunc Recognitio prædicta pro nullo teneatur, alioquin in suo robore permaneat.*

I haue knowne it doubted, whether the Suertie of the good Abearing (commanded vpon complaint) may be released by any speciall person, or no: because it seemeth more popular, than the Suertie of the Peace. But if it may (as it seemeth all one to me) then may the forme of such a Releasé be easily made, by that whiche is before concerning the Peace, vsing the wordes, *Securitatem de se bene gerendo*, in steade of the wordes, *Securitatem pacis*. Releasé of the *good Abearing.*

And the like imitation may be vsed also, for a *Supersedeas* of the good Abearing, if at the least that be grauntable by Iustices of the Peace.

I might here without breach of Order, prosecute the preseruation of the Peace, by the preuenting of suche as be riotously assem-

bled, and by handling the Statute of *Northampton*, whiche seemeth (by plaine speeche) to be prouided for preuention of the breache of the peace also: But because the first shal haue his proper place, and the latter is commonlye put in vre at this day after the Peace broken by forcible Entrie, I wil spare to speake of any of them, till I come to treate of those matters by themselues.

Of the breach of the Peace without a *multitude*, agaynst the person, and how it may be stayed, or punished by one Iustice of Peace out of the Sessions.

CAP. XVII.

Breache of the Peace without a *multitude*.

THe preuention of the breache of the Peace hath appeared, as well in the Suertie of the Peace, as of the good Abearing: & therefore mine owne order requireth, that I nowe declare what one Iustice of the Peace, may doe

doe (out of the Sessions) for punishmente of such as doe breake the Peace.

For, our law is no lesse carefull this waye to conserue the Peace, both by staying them that doe any waye aduenture towardes the breache thereof, and by punishing them that doe actually enter into the very violation of the same, than it was prouident to see it preserued before it came to any neare shewe of disturbaunce, or greater euill.

But because the breache of the Peace (as the law is taken at this daye) whether it bee by worde, or other acte, (and that also whether it be to the person, or to his goodes, or lands) may be as well committed by one only, or by two vpon a side (both which wee hold to be done without a multitude, though two in precise speache doe make a number) as by three or more in one companye (whiche the lawe properly calleth a multitude,) it shall be good to entreate by it selfe, firste of that breache of the Peace which may be committed without a multitude, and then to prosecute the other, if before all we giue the Iustice of Peace to vnderstande, that by what way soeuer he maye preuent or punishe the breache of the Peace in one person, the same meanes he may also vse agaynste any multitude so offending.

The breache of the Peace that may be practised against the person, climbeth to the destruction of the person, by sundry degrées: as by Threats, Affray, or Assault, violent and malicious striking, beating, wounding, maiheming and killing. The matter of manacing and threatning is alreadye handled in the last Chapter.

Affray and Assault.

The wordes Affray and Assault, be indifferently vsed of most men, and that in our booke cases, but yet in mine opinion there wanteth not a iust difference betweene them.

For, Affray, is deriued of the frenche *effrayer*, which signifieth to terrifie, or bring feare: and is the more haynous trespasse: for the lawe vnderstandeth it to be a cõmon wrong, and therefore is it inquirable and punishable in the Turne of the Shirife, and in a Leet, 4. H. 6. 10: and 8. E. 4. 5. Otherwise it is of an assault, as it seemeth by those very bookes. Yet may an affray be without worde or blow giuen: as if a man shall shew himself furnished with armour or weapon, which is not vsually worne and borne, it will strike a feare into others that be not armed as he is: and therefore both the Statute of *Northampton* (2. E. 3. ca. 3) made against the wearing of Armour and weapon) and the Writte thereupon grounded, doe speake of it, by the wordes,

effray

effray del pays, and, *in terrorem populi.*

But an Assault, as it is fetched from an other fountain, namely from the Latine *Assultus*, which denoteth a leaping (or flying) vpon a man: So can it not be performed, without the offer of some hurtfull blow, or at the least of some fearefull speeche. And therefore, to rebuke a Collector with foule words, so that he departed for feare without doing his office, was taken for an Assault, 27. lib. Ass. Pl. 11. And to strike at a man (although he were neither hurt, nor hit, with the blowe) was adiudged an Assault, 22. lib. Ass. Plac. 60. For this Assault doth not alwayes necessarily emplie a hitting: and therefore, in Trespasse of Assault and Batterie, a man may bee found guiltie of the Assault, and yet be excused of the Batterie: 40. Ed. 3. 40: and 45. Ed. 3. 24.

What actes be breaches of the Peace, and what not.

Manacings then, Affrayes, Assaultes, iniurious and violent handlinges and misentreatinges of the person, batteries, malicious strikings, &c. be breaches of the Peace, and doe drawe after them the forfaiture of a Recognusance, knowledged for the keeping of the Peace.

And therefore (for example) if a man doe imprison an other without warrant, or doe thrust him into a water (or riuer) whereby he

is in daunger of drowning, or doe rauishe a woman againste hir wil, or do commit manslaughter or burglarie or robberie vppon the person of an other, or doe committe treason against the person of the Prince, who as he is the head of his people, so are they also wounded in his hurte, he hath broken the Peace, Marr.

But concerning the manacing, assaulte or batterie of the person, this is to be noted by the way, that it is not in all cases a violation and breach of the Peace: for some are allowed to haue priuately, a naturall, and some a Ciuile power (or auctoritie) ouer others, so that they maye (in reasonable maner onely) correcte and chastise them for their offences, without imputation of any such breache. After the one sort, the parent is suffered (with moderation) to threaten and chastice the child within age. By reason of the other sort of power, the husband is not punishable if (not outragiously) he chastise his wife, or the Maister his seruant, the Scholemaister his Scholers, or a Gaoler (or his seruaunt, by his commaundement) his vnruly prisoners, or the Lorde his Villayne. But these thinges muste neuertheleste be done in conuenient place, and therefore not in the presence of the Prince, as it is thoughte, 27.lib. Ass.Pl.49.

And

And this power of the husband ouer the wife seemeth to be permitted by the wordes of the *Supplicaunt* that is sette downe for hir in the Register 89. when she standeth in neede of the peace against him, where it is sayd, That he shall bee bounde to doe hir no corporall harme, but with this exception, *Aliter quàm ad virum ex causſa regiminis & Castigationis vxoris ſuæ, licitè & rationabiliter pertinet:* Wherein it agreeth with the Ciuile Lawe, which yeldeth to the husbande that power, so that he vse it *Modicè*, moderately. And sayth M. Peter Martyr vpon the 1. to the Corinthians ca. 11. ver. 3. The husband may *Corripere & castigare vxorem, eadem charitate qua Christus Ecclesiam verberat, nimirum, vt melior fiat, &c.* The power of the Maister & Schoolemaister, ouer the Seruaunt and Scholer, is also affirmed by M. Marrow, and confirmed by some opinion in the booke, 21. E. 4. 6. & 53. Whereunto I maye also adde the mynde of those that made the Statute (33. Henri. 8. cap. 12.) concerning malitious striking in the Kings house: for they doe therein specially exempt the Maister that striketh his Seruaunt, with his hande, fist, small staffe, or sticke, for his correction for any offence. Howbeit in these cases, I doe aduise both husbande and maysster, not to prouide so muche howe they

may escape the breach of a Recognusance or punishment of our Law, as to forese that they keepe the law of God, and doe nothing against honestie: the one as knowing that the wife is his owne flesh, and the other as considering that hee also hath a Maister in heauen.

Euery man also maye take his Kinsman that is madde, and maye put him in a house, and binde and beate him with roddes, without breache of the Peace, 22.lib. Ass. Plac.56.

A Constable, or other Officer, or any other, being of their company, that shall be driuen to strike any person, for the better executing of their Office or charge (as in many cases they maye lawfullye doe) breaketh not the Peace, nor shall be in perill to forfeyte anye Recognusance of the Peace, by reason of any such assault or batterie, as maye well be inferred vpon the booke cases 17.E.4.5: 2.E.4.6. & 8: 4.H.7.1: & 14.H.7.8. For such Actes, be iustifiable. And see for this purpose also M.Stamforde.Fo.13.14.15.

Besides this, if a man be inforced to repulse violence (done vnto his owne person, or to the persō of his wife, father, mother, childe, kinsman, maister, or seruaunt, or to his goods being in his possession) eyther by threatning

or

or striking agayne, his so doing is also iustifiable, as may be seene in Marrow. 33. H. 6. 18: 19. H. 6. 31: 9. E. 4. 48: & 35. H. 6. 50. But a Fermer, or Tenant, cannot iustifie suche an acte in defence of his Landlorde: nor a Commoner in defence of the Maior or the Baylifs of a corporate towne.

If one man also hurte or kill another at Fense play, or at the Tilte, Torneament, or Barriers (in presence of the Quéene, and by hir licence) or in a wager of Battell for the triall of a cause according to the aunciente Lawes of this Realme, it is no breach of the Peace at all, Mar.

Thus farre of those breaches, that maye bring daunger to a Recognusance of the Peace: for some others there bée, which are (in a degrée) against the Peace, so that an Enditement *Contra pacem* may be founde vpon them, and yet no forfaiture of such a Recognusance shall ensue of them.

Breaches of the Peace, that make no breache of bond for the Peace.

As if a man (so bounde) doe take a mans goods wrongfully, (so that it bée not from his person) or doe Rauish a Warde from the possession of his Garden: or do a Trespasse in an other mans Corne, or grasse: or do Disseise an other of his landes: or doe enter into landes, where he oughte to bring his Action, it will bréede no forfaiture of his bonde.

bonde.

Therefore let vs now come to the pacifying and punishing of the Breache of the peace vpon the person, by one Iustice of the Peace out of the Sessions.

A Iustice of the Peace, is vndoubtedly (for this purpose) endowed with no lesse power, than euery Priuate man, or any Constable hath: as it is playne by 14.H 7.8: & 9.E.4.3. And therefore it may not be thought *Heterogeneum* (or besides my purpose) if I shal shew what both a Priuate man and Cõstable may doe in this case: yea rather I chose to vtter this matter vnder their names, to the ende that I may with that one labour bewray the dueties, both of them and of the Iustice of the Peace himselfe in this behalfe.

The duetye of a stander by at an *Affray*.

The Law loketh, that euery Priuate person, whom it shall happen to be present at an Affray, Assault, or Batterie, (for nowe I will with other men confoũd those names) should do his part to depart them that fight togither: and it doth (to that end) enable him also with some portion of auctoritie.

To part them.

For, if two be fighting, euery Stander by, may lawfully, and shall do well to put them in sunder: and if he take hurt thereby, he shal haue his remedie by Action against him that did the hurt.

But

But yet he (being but a Priuate man) may do no hurt, if they resist him, for they also shal then haue Action for it against him: wherein his case differeth (as you shall see anone) from the case of an Officer.

And if an Affray be in the high streate, and one commeth towardes it with harnesse or weapon, to ioyn with the one or other partie, euery man that seeth it may stay him till the Affray be ended.

Any man also maye staye the Affrayours, vntill the storme of their heate bee calmed, and then maye he deliuer them ouer to the Constable to imprison them, till they finde Suertie for the Peace: but hee himselfe may not committe them to prison, vnlesse the one of them be in perill of death by some hurte: for then may any man carry the other to the Gaole, till it be knowne, whether he so hurt, will liue or die, as appeareth by the Statute 3 H. 7. ca. 1. To staye them.

But, as the keeping of the Peace is more specially recommended to the charge of Iustices of Peace, Cõstables, petit-Cõstables, Borsholders, Tithing men, and such like Officers: so be they also therefore armed with a larger measure of auctoritie. And therefore, if a Cõstable, or such other Officer do see a man, endeuouring to make an Affray, hee The *Officers* duetie in an *affray*.

maye

he may commaund him to auoide vpon paine of imprisonment: and if the Affray be great, or daungerous, he may make Proclamation, and maye commaunde the parties to prison for a small time, till their heate be passed ouer, and then he must deliuer them without any fine taking. But if two doe vse only hoat wordes one agaynst the other, the Officer maye laye no handes vpon them, vnlesse they doe also drawe weapon, or doe otherwise offer to strike: If they once fighte togither, then may the Officer departe them, and if hée happe to bée hurte in that doing, hée shall haue an Action of Trespasse for it: but if any of them be hurt by him in the resistaunce, no Action lieth for them: For, the Officer ought to doe his beste to departe them: in so muche as if it be presented at the Sessions of the Peace, that he was present at an Affray, and did not vse his indeauour to put thē in sunder that fought togither, hée shall bée fined for it: Otherwise it is, if he were not present, but were onelye tolde of the Affray, Marr.

If any of the parties bée in daunger, by reason of a hurte receyued in the Affray, then ought the Officer to arrest & carrie the other to the Gaole, vntill he shall finde suertie to appeare at the Gaole deliuerie. Fitzh. 72: 38. E. 3. 6:

E.3.6:& 22.lib.Ass.pl.56.

And if two men be fighting in a house(the doores shut) then may the Officer breake open the doores to see the Peace kept, though neyther of them haue taken hurt.

And yet when the Constable hath taken an Affrayor, he may not imprison him in his house,but in the Stockes, and that not aboue such a reasonable tyme as he may prouide to conuey him to the Gaole till he finde suertie of the Peace,3.H.4.9 : & 22.E.4.35.

And herein he differeth from a Gaoler, or the Shirif (who hath the charge of the Gaole) for he may make a Gaole of his house : and so cannot a Constable or Iustice of the peace doe. And by the Statute (5. H. 4 ca.10.) the Iustice of Peace must sende his prisoners to the common Gaole.

If one doe make an Affray vppon a Iustice of the Peace, Constable, or suche other Officer, he maye not onelye defende himselfe, but maye also apprehende the offendour, and sende him to the Gaole, til hée will finde suertie of the Peace,5.H.7.6. And the Iustice, or Constable maye (if néede bée) commaund assistance of the Queenes people, for the pacifying of an Affray,3.H.7.10.

If he that maketh an Affray do flie into a house when the Iustice of Peace(or Constable

ble commeth to arreſt him, they may (in freſh ſute) breake open the doores, and take him, Mar. or if he flie thence, they may make freſh ſute and arreſt him, though it be in an other Countie by the opinion of ſome men 13. E. 4. 9. And it ſhould ſeeme (by the reaſon of that Booke) that in this caſe alſo, they may breake open the doores to apprehende him: becauſe the Prince hath an intereſt in the matter, and then a mans houſe ſhall be no refuge for him, as it ſhould be in Debt or Treſpaſſe, where the intereſt is but onelye to ſome particular ſubiect.

Now, if the Conſtable do arreſt one, that hath hurt an other, and doe voluntarily ſuffer him to Eſcape, and then he that was hurt dieth thereof within the yeare and daye, the Conſtable ſhall make a great Fine, and that to the value of his goodes, in the opinion of ſome, 11. H. 4. 12: & Stanford. 35. But the offenſe ſhall not haue ſuch Relation to the ſtroke, as to make the eſcape to become Felonie thereby: *Commentar. Plowd.* 263.

Of

Of the breach of the Peace, without, or with, a multitude, by forcible entrie into landes or tenements &c. And what one Iuſtice of the Peace (out of the Seſsions) may do therein.

Cap. xviii.

IT ſéemeth, that before the troubleſome reigne of King Richard the ſecond, the common Lawe permitted anye perſon (which had good right or title to enter into any land) to winne the poſſeſſion thereof by force, if otherwiſe he coulde not haue obtained it.

And at this day, if (in a common Actiõ or enditemente, of Treſpaſſe for entring into land) the Defendant wil make Title thereunto, the matter of the Force alleadged againſt him will reſt altogither vpon ỹ validitie of his Title, as appeareth 7.H.6.13 and 40. A mã may alſo at this day retaine wyth force his owne goods and cattailes againſte an other 19.H.6.31: & 9.E.4.18.

But after the rebellions tumulte and in-

ſurrection of the villeins & other the baſe cõmons which happened in the 4. yere of that Kings reigne, the Parliamente (5 Ri.2.cap. 7.) thinking it neceſſarie to prouide againſt all occaſions of further vproare and breach of the Peace, did ordayne among other things, That from thenceforth, none ſhould make anye entrie into anye landes or tenementes, althoughe his entrie into the ſame were lawfull, but onelie in peaceable and eaſie manner, and not with ſtrong hande, nor with multitude of people, vpon paine of impriſonment, and to bee raunſomed at the Kings wil.

But becauſe that Statute gaue no ſpeedie remedie in this point, nor lefte any ſpeciall power therein to the Juſtices of Peace in y countrie, wheras the experience of that buſie time required a more readie hande to the ſuppreſſing of ſuch diſorder, & Juſtices of the Peace were (by 13.R.2.Stat.1.cap.7.) made of newe in all the Counties of England of the moſt ſufficient Knights, Eſquires and men of lawe of the ſame Countie. And ſworne to keepe and put in execution all Statutes and ordinaunces touching their offices. Therefore (15.R.2.cap.2.) it was further enacted, That when ſuche forcible entrie ſhould bee made into landes or tenementes, or into

into Benefices, or Offices of the Churche, and complainte thereof come to anye Iuſtice of the Peace, hee ſhoulde take ſufficiente power of the Countie, and goe to the place where the forcible entrie was made: and if hee founde anie that helde ſuche place forciblie after ſuche entrie made, the ſame ſhoulde be taken and put in the next Gaole, there to abide, conuicted by the Recorde of the ſame Iuſtice, till they hadde made fine, and raunſome to the King, And that as well the Shirife, as all others of the Countie, ſhoulde attende vpon the ſaid Iuſtice, to goe and arreſt ſuche offendours, vpon paine of impriſonment, and to make fine to the King.

But nowe againe, for as muche as thys laſte Statute did not extende to thoſe that entred Peaceablie and then helde wyth Force: nor yet reached to the offendors if they were remoued before the comming of the Iuſtices, nor gane anye paine againſts the Shirife that did not obeye the preceptes of the Iuſtices in this behalfe: it was not onelie ordayned by a thirde Acte (made 8. Henri. 6. cap. 9.) That the ſaide former Statutes ſhoulde bee holden and duelye executed, But it was adioyned alſo thereunto, That if anye from thence-

forth ſhould make ſuch forcible entrie into landes, tenementes, or other poſſeſsions, or ſhould them hold forcibly, after complainte thereof made within the ſame Countie to any of the Iuſtices of the Peace there by the parties greeued, that the Iuſtice ſo warned ſhoulde in conueniente time cauſe the laſte ſaide Statute duely to bee executed at the coſtes of the ſaide party.

And whether the perſons (making ſuche entries) were preſent, or auoided before the Iuſtices comming, the ſame Iuſtices (or Iuſtice) in ſome good towne next to the ſaide tenementes, or in ſome other conuenient place at his diſcretion, ſhoulde haue power to enquire by the people of the ſame countie, as well of them whiche made ſuche forcible entries into landes or tenementes, as of them whiche helde the ſame with force: And if it be founde before any of them, that any doeth contrarie to this Statute, then the ſaide Iuſtices (or Iuſtice) ſhall doe the ſaide landes or tenements to be reſeiſed, and ſhall put the partie (ſo put out) in full poſſeſsion of the ſame. And when the ſaide Iuſtices (or Iuſtice) make ſuche enquirie, they ſhall directe their Precepte to the Shirife, commaunding him on the Kings behalfe, to cauſe to come before them and euerie of them

them, ſufficiente and indifferente perſons, dwelling nexte aboute the ſame landes or tenementes, whereof euerie manne ſhall haue landes or tenementes of the cleare yearely value of fortie ſhillings at the leaſt, and the Shirife ſhall returne twentie ſhillings in iſſues vppon euerie one of them at the firſte Precepte retournable, and at the ſeconde fortie ſhillings, and at the thirde fiue poundes, and at euerie daye after, the double. And euerie Shirife of Countie, and Baylye of Fraunchiſe, that ſhall not duely make execution of the ſaide Precepts, ſhal forfaite to the King twentie poundes for euerie defaulte, and ſhall moreouer make fine and raunſome to the king. And as well the Iuſtices (or Iuſtice) aforeſaid, as the Iuſtites of Aſsiſes, may heare and determine ſuch defaultes of Shirifes or Baylies, aſwell by Bill at the ſute of the partie grieued for himſelfe, as for the King onelye by way of Enditement, and vppon ſuche due attaynder, hee whiche ſueth for himſelfe and for the King, ſhall haue the one moietie of the ſaide twentie poundes togither with hys coſtes and expenſes: and ſuche Proceſſe ſhal be againſt ſuche ſo attaynted, as lyeth againſte anie perſon endited, or ſued, by writte of Treſpaſſe with force and Armes

againſt the Peace. And the Maiors, Iuſtices of the Peace, Shirifes and Bayliſes, that are in Cities, or Bourrowes (hauing fraunchiſe) ſhall haue lyke power in the Articles aforeſayde, as the Iuſtices of Peace, and Shirifes in the Counties haue.

But they whyche keepe by force theyr poſſeſsions in anye landes or tenementes, whereof they or their aunceſtours, or they whoſe eſtate they haue therein, haue continued their poſſeſsion in the ſame by three yeares or more, ſhall not be endamaged by this Statute.

This laſte Statute I haue the rather exemplified at large, becauſe it containeth a full direction in this buſineſſe: And yet becauſe I haue ſéene ſome other things, that tende to ſome explanation, of ſome pointes of the ſame, whyche bée good to bée ſéene, and conſidered, I thinke that they alſo maye bée well beſtowed here.

This Statute therfore enableth any one Iuſtice of the Peace to deale in this matter vpon occaſion giuen, and is made, as wel againſt ſuch as enter with force, as againſte thoſe that enter peaceably, and then holde in with force.

But, whether the Iuſtice bée bounde to ex-

examine the goodnesse of hys Title that entreth, and accordingly to make or denye restitution to the partie, it hathe bene oftentimes made a questiõ, though in mine opinion it carryeth no great doubt with it. For seeing that the Statute (5. R. 2 ca. 7.) prohibited all entries wyth force although they were otherwise lawfull: and the Statute (15. R. 2. cap. 2.) rehearsing the same, giueth auctoritie to euery Iustice of Peace vppon any suche forcible entrie, presently to commit the offendors there found to the Gaole: and this Statute, meaning to supply some defectes in the former, gyueth speciall remedie to the partie grieued by the ayde of the same Iustice, by restoring of hym to his possession againe: I see not, why the Iustice of Peace (who perhaps shal want sufficient skill in lawe to discerne of the Title, and maye yet bee bothe a fitte man to suppresse force, and able ynough to restore a possession) shoulde bee tyed to the discussing of the right or Title of either of the parties. And therefore 22. Henrie. 6. 18 admitteth thys case, That if A. shoulde disseyse B. and B. shoulde enter agayne and putte oute A. by force and strong hande, yet shoulde A. bee restored to hys possession at the handes of the Iustice of Peace, although his firste

The right, is not materiall.

entry were vtterly vnlauful: And that thervpon (notwithstanding the restitutiõ made) B. may haue an Assise, or else may enter vpon him againe, so as he doe it in peaceable manner. And I doe little doubt, but that a Lessée for yeares, or a Copieholder being put out with force, and the Lessor or Lorde disseised thereby, the Lessée or Copiholder ought to haue restitution by the helpe of a Iustice of Peace vpon this Statute.

Complaint. But now wheras the words be, After cõplaint &c. that doth not alwayes inforce a necessitie of Complaint, by the partie grieued. For if a forcible entrie bée committed, the Iustice may inquire of it, and may also make restitution, vpõ information or other knowledge thereof, though no complaint be brought vnto him by ỹ partie grëued thereby, as it is holden 7. E. 4. 18.

Possession. It séemeth further, that it should not be altogither requisit to the punishing of ỹ offenders by imprisonment and fine, that the partie grëued shoulde bée actuallye put out of possession For al the said Statutes doe specially prohibite the forcible entrie it selfe: & yet, to haue restitution vpon the Statute, the putting out must needes be founde also. And therfore, if ỹ case be, that after the death of A a straunger entreth into his lands and holdeth

holdeth the same by force against his heire, before he had gotten any possession in deed, the heire of A. in this case (saith Marr) shall neuer haue restitution, because he neuer had any other than a possession in Law, which is no actuall possession.

And by his opinion also, If a man claymed a rent or cõmon in land, that is so holden with force, that hee can not distraine for the one, nor vse the other, this is a force remoueable by this statute: but the partie can thers haue no restitution made vnto hym.

As one person alone may commit a forcible entrie, so also maye he be punishable for deteining of the possession by force. Entring or holding with force.

It seemeth also, that this entrie (or deteining) must be with some offensiue weapõs, as with bowes, billes, swordes, stones, harnesse, or such like: and yet Marr. thinketh, that if the Iustice of Peace come and finde the doores shutte, and them within denying him to enter, this is a deteyning with force, & the Iustice may therevpon commit them.

If it bee founde, that diuers persons haue made a forcible entrie to the vse and behoofe of a stranger that is absent, although he doeth after agree vnto it, but entreth not himselfe, this is no force in him: for (saith 2 H. 7. 16.) a forcible entrie cannot be without entring

L.v. actu-

actually.

Enquirie. Eche Iurour of this Enquirie, oughte to haue landes or tenements of the yearly value of xl. ℔. by yeare at the leaſt, aboue al repriſes. And Marr. is of opinion, that if it bee not ſo, the partie grieued may ſtay the reſtitutiō for that cauſe. But how he can hinder the reſtitutiō that the Iuſtice of Peace is to make vpon ſuch a verdit (otherwiſe than by cauſing the record therof to be remoued into the Kings Benche) I doe not well perceiue.

Reſtitution. After that the forcible entrie, or the deteining with force, or both, be found by the enqueſt, the Iuſtice of Peace oughte eyther by himſelfe to put the partie grieued in poſſeſſion againe, or elſe he may direct his precept to the Shirife to reſtore him. But if that Iuſtice of the Peace which made the Enquiry, do happen to die before he make the reſtitution, whether the other Iuſtices of the Peace at their Quarter Seſsions (hauing the record of that Enquirie deliuered vnto them) may award a Writ of Reſtitution to the Shirife, or no, it may bee ſome doubt (albeit Marrow thinketh yea) becauſe it ſeemeth, that they haue no power to deale with that Record. But this is certain, that if that preſentmēt were receiued into ȳ Kings Bench, the partie grieued might then well ynoughe haue reſti-

restitution awarded out of that Court, 7.E. 4.18: and 4.H.7.18.

And in some cases (saith Marr) there may bee double or crosse restitution made. As if it bee found, that I my selfe was seised vntill A. disseised me with force, whom also B. disseised with like force: in this case if A. haue restitution against B. then may I also praye my restitutiō against A. But if I first haue restitution, then (saith hee) A. hath loste the aduantage of his.

And if it were foūd by one Enquirie, that I my selfe was seised, vntill A. disseised me with force, & found by any other Jurie, that the saide A. was seised vntil by me disseised with force: then euery of vs (saith he) maye pray restitution against the other. And hee shall bee in the worst case, that hath the first restitution, for the other also (saith he) shall haue hys restitution after hym.

If two Jointenants were putte oute by force, and one of them onely woulde complaine and seeke for restitution, though this speciall matter were found by the Inquest, yet should he that sued for it, haue restitution: And this would not worke any seuerāce of the Jointure betweene them, Marr.

Restitution is not to bee made, but onely to the partie which was putte oute. And

therefore, if the Father were putte out by force, and dyeth after enquirie, and before restitution, his heire shall neuer haue restitution vpon this Statute: no more than the executors of a Lessee for yeres, that was put out, shall haue any restitution therby, Mar.

If a Writ of restitution bee awarded to the Shirife, & hee returneth that hee is so resisted that he can not bring the partie into hys possession, hee is to bee amerced for that returne (sayeth Marr.) for hee may take the power of the County to execute the precept.

The case may be such, that the force is not punishable by any Iustice of Peace, vppon this statute, nor any restitution to bee made at all. As if the house or landes bee in one Countie, and the men (forcibly arrayed for defence thereof) bee in a house or lands, that is in the Countie adioyning, no Iustice of Peace can meddle with this matter vppon this Statute. No more can they, if the place it selfe extende into two Counties, and the parties remoue their force (before the comming of the Iustice) oute of that Countie wherein he is a Iustice, Mar. For Iustices of the Peace haue no power out of their owne Counties, but in certaine especiall cases giuen by the Statutes.

Three yeares possession.

Lastly, vpon the prouisoe in the later end of

of this Statute concerning their holding with force, which haue had possession by the space of three yeares or moe, there ariseth some matter of doubt (in mine opinio) how farre the benefite of that clause oughte in good equitie to bee extended. For I finde a difference taken (14.H.7.28) betweene an Action brought vppon the Statute, and an Inditement founded therevpon. In the Action (saith M. Fineux) It wil be a good Bar for the Defendant to pleade, that hee hathe kept possession by three yeares space, yea, though he hath done so al that time by force. But vpon an Inditement, possession by xx. yeares space togither by force, shall bee no plea at all against the King, nor hinder the partie of his restitution oute of the Kinges Bench.

Thys opinion hath beene, and still is receyued for Law, as I haue learned. Howbeit, if we examine wel the reason of inserting that prouisoe into the statute, perhaps the diuersitie will not fall out in all respects so reasonable, as it seemeth at the first shew to bee faire & plausible. For when this Statute had in generall tearmes brought within ỹ penaltie of 15.R.2.ca.2. all such as should deteine any lands or tenemẽts with force, after that they had entred into the same in peace,

peaceable maner: yet was it thought iuste & conuenient to exempte from that punishemente all those whiche (hauing entred in peaceable maner, and vppon good tytle) had continued their possession by three yeares space, before anye forcible deteyner of the same. And therfore, such persons be not only to take aduantage of that clause in actiõs brought against them vpon the Statute (in myne opinion) but against the Kyng, to eschue the punishement of a forcible defence committed, & against the partie grieued, to kepe him from any restitution at the hands of the Iustice of the Peace also. And herevpon M. Marr. saith generally, that if the three yeares possession be found by the Inquirie, then the forcible deteyners shall haue the aduantage of it, against the King also, which séemeth to be very reasonable, especially (as I haue said) in case where the deteinors did enter peaceably and by good Title: For so far extendeth the speach of all the Iustices opinions, 22. H. 6. 18. And otherwise I sée not how that may wel stande, which M. Fineux hymselfe afterwarde (21. H. 7. 39.) affyrmeth, saying, that A mans house is hys Castle, which he may defend with force against any priuate arme that shall inuade him. Nevertheless in that principall case (14. H. 7. 28.)

28.) being (as it is there) put of a wrongfull entrie, and that with force, & of the continuance of that possession (with force also) by dyuers yeares, I muste agree, that such a disordered person oughte not by anye continuing of his wrong, to take benefite by this prouisoe, eyther against the King vppon an Inditsment, or a gainst the partie grieued to stay his restitution, or to conclude hym in an action brought vpon this Statute.

But nowe, whether suche as be Indited, may bée admitted to their Trauers béefore the same Iustice of the Peace, or no, and where, or before whom this Trauers is to be made, or receiued, I wil not take vpon mée to discusse. Thys séemeth (vppon bothe the Statutes) to bée plaine, that such persons as the Iustice of the Peace doeth finde and sée, continuing the force at hys commyng, may bée immediately committed by hym to the next Gaole without any gainesaying, there to remaine (conuicte of that offence by the onelie recorde of the same Iustice) till they shall haue made fine and raunsome to the Quéene. But vppon the Enquirie it séemeth, that hee hath no further power giuen vnto him by this laste statute, than to make restitution onelie. And therefore the surest way in thys case is, to delyuer ouer the

Tender of Trauerse.

Indite-

Inditement, either to the *Custos Rotulorum*, or to the Iustices of Gaole delinerie (as in other cases they were in olde time, by the Statute 4.E.3.ca.2. appointed to be) or else into the Kings Bench, and so to referre the further proceeding therevpon vnto their power and auctoritie.

Assessing the Fine.

And againe, touching the Assessement of the fines vppon the offendors committed to the Gaole, some do think, that the self same Iustice that committed them, shoulde also haue sufficient auctoritie to putte them to their fine, and vppon pledges founde for the payment of it, to deliuer them out of prison agayne. For (say they) he is the only Iudge of this offence, and onely hathe the custodie of that Recorde, and knoweth best howe to rate the Fine accordyng to the quantitie of the trespas. And as he is bound by his Othe and duetie (in their opinion) to make oute estreits of all Issues and amercements growing due to the Quéene by such an Inquirie, so ought he also to estreit this Fine and send it vppe into the Escheaquer, that from thence the Shirife may bée commaunded to leuie it to the Quéenes behoofe. Yet to auoid al doubt, it semeth here also ỹ better course, to referre that matter to the Quarter Sessions, or rather to the comming of the Iusti-

ces

ces of Gaole deliuerie into the Countrey.

These things thus saide, I will (for the more compleate furniture of the Iustice of the Peace in this seruice against forcible Entries) arme him with these fewe precedents following:

The *Mittimus* to the *Gaole*, testifying the holding with force.

Robert Bing, one of the Iustices of the Peace of oure Soueraigne Ladye the Queenes Maiestie within hir Countie of *Kent*, to the keeper of hir Maiesties Gaole at *Maidstone* in the saide Countie, and to his deputie and deputies there, and to euerie of them, greeting. Vpon complaint made vnto me by *C.D.* of *Ightham* in the saide countie Yeoman, that one *A.B.* &c. and other Malefactors had forcibly, and with strong hād entred into his house, &c. in *Ighth.* afore said, and him expulsed, & the same yet hold with force, I wente this presente daye to the said house, & there found the saide *A.B.* &c. forcibly holding the said house, &c. wyth bowes and arrowes, coats of plate, and long piked staues, to the great disturbance of hir Maiesties Peace, and against the forme of the Statutes in that behalfe ordained: And therefore, I send you by the bringers hereof, the bodies of the said *A.B.* &c. conuicted of

the ſaide forcible holding by my Recorde, commaunding you and euerie of you, in hir Maieſties name, that yee receiue them, and ſafely keepe them in your ſaide Gaole, vntil that they ſhal haue made their fine & ranſome to the Queene, & bee deliuered thence by order of the Law: hereof faile ye not, vpon the peril that will fall thereon. Yeouen at *Wrotham* vnder my Seale this 2. daye of September, in the xxiij. yeare of the raigne of our ſaide ſoueraigne Lady Elizabeth, &c.

And for his *Inquirie*, vpon ſuche a force, as followeth:

The Precept to the Shirife.

RObertus Bing, *vnus Iuſticiariorum Domi. Regina, ad pacem in commitatu Kancia conſeruandam aſſignatorum, vicecomiti eiuſdē commitatus ſalutem: Ex parte dicta Domina Regina tibi mando & præcipio, quod venire facias coram me apud* Ightham *in commitatu prædicto* 20. *die Sep. proximo futuro* 24. *probos, ſufficientes & legales homines de Viceneto de* Ightham *prædict. quorum quilibet habeat xl. ſol. terrarum & tenementorum vel reddituum per annum ad minus vltra repriſas, ad inquirendum ſuper ſacramentū ſuum, ſi* A. B. *& alij malefactores & pacis dicta Do. Regina perturbatores, in vnum meſuagium & decem acras terræ & alia tenemēta de* C. D. Yeoman, *in* Ightham *prædicta, manu forti, ſuper*

per possessionem prædict. C.D. ingressi sunt aut eadem cum fortitudine adhuc tenent & occupant. Et videas, quod super quolibet Iuratorum in hac parte impanellandorum xx. sol. de exitibus ad primũ diem returnes, & hoc nullatenus omittas sub pœna xx. lb. quam noueris te incursurũ, si in executione præmissorũ tepidus aut remissus fueris: Et habeas ibi tunc hoc præceptum. Teste me præfato R. B. 10. *die Septemb. Anno regni dictæ Dominæ nostræ Eliz. dei gatia Angl. Franc. & Hib. Reginæ, fidei defensoris, &c.* 23.

And vppon defaulte of apparance of these Iurors, an *Alias* **may be awarded, and after the** *Pluries* **infinite, till they come: but so, that at the day of the second** Writ, **xl. s. must be returned, at the third** Writ, **C. s. and at euerie day after, the double.**

The *Inquirie* (or *Verdite*) of the *Iurors.*

INquisitio pro Do. Regina, capta apud Ighthã, *in comit. Kanc. 20. die Sept. An. reg. Do. nostræ Eliz. &c.* 23. *super sacramentum* A.D.E.F.G. I.L.M. *&c. coram* R.B. *vn. Iusticiariorum dictæ Dominæ Reginæ ad pacem in dicto cõmitatu conseruandam assignatorum. Qui dicunt, quod vbi* C.D. *de* Ightham *prædict.* Yeoman, *diu lẽgitimè & pacificè seisitus fuit in dominico suo vt de feodo de vno messuagio, &c. cum pertinentijs in* Ighth. *prædict. & possessionem suam sic continuauit, quousq;* A.B. *de &c. & alij &c.* 1. *die Sept. vlt. elapso, vi & armis, viz. cum baculis, gladijs,*

arcubus, ſagittis, loricis, galeis, gunnis, baliſtis, in meſuagium prædictum, &c. intrauerunt, ac ipſum C.D. *inde expulerunt, & idem meſuagium &c. à prædicto die & c. vſq; ad diem &c. cum huiuſmodi fortitudine & potentia tenuerunt & occupauerunt, in magnam pacis dictæ Dominæ Reginæ perturbationem, ac contra formam ſtatuti, in tali caſu editi & prouiſi, vbi nullus eorum, nec aliquis alius cuius ſtatum ipſi aut aliquis eorum habuerunt aut habuit, aliquid in eodem meſuagio &c. aut aliqua inde parcella, habuerunt aut habuit infra tres annos proximos ante ingreſſum ſuum prædict. neque alio tempore precedente, ad notitiam Iuratorum prædictorum.*

The Warrant for *Reſtitution*, to the *Shirife*, if the *Iuſtice* himſelfe will not make reſtitution.

ROb. Bing, vnus Iuſticiariorum &c. aſſignatorum, Vicecometi eiuſdem cõmitat. Salutẽ: Cùm per quandam Inquiſitionem patriæ coram me captam apud Ighth. *in commitatu prædict. 20. die Septemb. &c. ſuper ſacramentum ac per formam Statuti in huiuſmodi caſu prouiſi compertum fuerit, quod* A.B. *&c. & alij &c. die &c. anno &c. in quoddam meſuagium &c. Chriſtopheri* D. *&c. in* Ighthain *prædicta, vi & armis ingreſſi fuerint, ac ipſum* C. D. *inde expulerunt, & prædictum meſuagium, &c. à prædicto die, &c. vſque*

vsque ad diem &c. manu forti, & cum potentia tenuerunt & occupauerunt, prout per Inquisitionem predictam plenius liquet de Recordo: Ideo ex parte dicta Domina Regina tibi mando & precipio, quod ad hoc debite requisitus, vnà cum posse comitatus tui (si necesse fuerit) accedas ad mesuagiũ & cætera premissa, ac eadẽ cum pertinentijs reseisiri facias, & prefatum C.D. *ad, & in, plenam possessionem suam inde, prout ipse ante ingressum predictum fuerat, restitui, & mitti facias, iuxta formam dicti statuti de ingressibus manu forti factis editi & prouisi: & hoc nullatenus omittas, periculo incumbente. Teste me prefato, &c.*

The execution of a *Writ* vpon the Statute of *Northamp.*

I come now to ỹ performance of that promise which I made cõcerning the statute of *Northampton*, for that also is nowe of late dayes, chiefly put in vse for the punishment of Forcible Entries. That Lawe (in effect and for this purpose) is thus: No man whatsoeuer (except the Kings seruantes and Ministers, in his presence, or in executing his Precepts, or other Offices, and such as shall assiste them: and except it be vpon crie, or proclamation made for armes, to keepe the Peace, and that in places where suche actes do happen) be so hardy to come before the Kings Iustices, or other his Ministers, doing their offices, with force & armes: Nor bring

any force in affray of the Countrie: nor go, nor ride armed, by night, or by day in faires or markets, or in presence of the Iustices or other ministers, nor in any place elsewhere, vpon paine to forfeite his Armoure to the King, and his bodie to prison at the Kings pleasure, 2.E.3.cap.3.

Vpon this Statute, he that is put oute, or holden out of his land with force, vseth to haue at this day a Writte directed out of the Chauncerie, eyther to the Shirife onely (as M.Fitz in his Nat.Br.Fol.249. rehearseth it, for I finde it not in the Register of Writtes) or else *Custodibus pacis, ac Vicecomiti, & eorũ cuilibet*, as the common maner is) commanding, that Proclamation be made vpon this Statute and that if any bee afterward found offending against the same, that then they shall bee committed to Prison (there to remaine vntill that some other commaundement bee giuen concerning them) and that their armour and weapon shall bee prised, and the same answeared to the vse of the Queene.

But, forasmuch as that Iustice of Peace, (to whome this Writ shall be deliuered) is ta make execution of the same, as a Minister onelie, and is to Certifie hys dowyng therein, I thinke good to lend him these few helps

helps towards it.

At his comming to the place where the force is supposed by this Writ, he may cause the Oyes for silence to bee made, wyth this, or such an other Proclamation.

THE Queenes Maiesties Iustice of hir Peace straightlye chargeth, and in hir Maiesties name commaundeth all and euerie person to keepe silence, whilest hir Maiesties Writ vpon the Statute made at *Northampten*, in the 2. yeare of King Ed. 3. hir noble Progenitour, deliuered to the saide Iustice, be read, and Proclamation bee thervpon made accordingly.

Then may he reade the Writ, or declare the effect thereof in English.

After that, let the Oyes bee made againe, and therevpon may this Proclamation follow.

HIR Maiesties sayde Iustice, doeth in hir Highnesse name, and by vertue of hir sayde Writte, straightlye charge and commaunde, that no manner of person, of what estate, degree, or condition soeuer, nowe beeing within the house of *B.* &c. named in the saide Writ, shall goe armed, nor

kepe force of armor or weapon, nor do any thing there, or elſe where, in diſturbance of hir Maieſties Peace, or in offence of the ſaide Statute, vpon the paines of looſing his ſaide armour and weapon, and of impriſoning of his bodie at hir Maieſties pleaſure.

God ſaue the Queene.

This done, the Iuſtice maye enter, and ſearche whether there bée anye force of armour or weapon worne or borne againſte this Proclamation: or otherwiſe he maye enquire thereof by a Iurie (for ſo the Writ it ſelfe doeth warrant hym to doe) and if anye ſuche bée founde, he ought to impriſon the offendors, and to ſeiſe and praiſe the armoure and weapon ſo founde with them. But if (vpon the Proclamation made) they do depart in peaceable maner, then hath he no warrant by the Writte to commit them to priſon.

And what weapons bée offenſiue in the caſe of this Statute, he ſhall the better diſcerne, if he take wyth hym theſe fewe lines drawen out of M. Bractons Booke, Fol. 162. where he ſpeaketh of the like violent diſſeiſine, thus: *Eſt etiam vis armata, non ſolum ſi quis venerit cum telis, verumetiam omnes illos*

illos dicimus armatos, qui habent cum quo nocere possunt. Telorum autem appellatione, omnia in quibus singuli homines nocere possunt, accipiuntur: Sed si quis venerit sine armis, & in ipsa concertatione ligna sumpserit, fustes, aut lapides, talis dicetur vis armata. Si quis autem venerit cum armis, armis tamen ad deijciendum non vsus fuerit, & deiecerit, vis armata dicitur esse facta. Sufficit enim terror armorum, vt videatur armis deiecisse.

But nowe let me shewe him a Forme **of** Certificat **(or returne) of thys** Writ **into the** Chauncerie **and then make an ende.**

Upon the Writte **it self these wordes may bee** Endorsed.

Executio istius Breuis patet, in quadam Scedula eidem Breui consuta.

And the Scedule **may be thus:**

EGo Wilhelmus Lambarde *vnus Iusticiariorum pacis Domine Regine in comitatu Kancie, certifico, in Cancellariam dicte Domine Regine, quòd virtute istius Breuis mihi primò deliberati, publicè proclamari ex parte dicte Domine Regine feci, apud* B. *cuius in dicto Breui fit mentio (tali die &c.) prout in dicto Breui precipitur: Et quod quidam* A.C. *&* D.E. *de* F. *in cõmitatu predicto* Laborers, *predictam proclamationem*

nem parupendentes, post proclamationem sic factam armati iuerunt, ac armatam potentiam duxerunt, scilicet duas galeas, vnum arcum, & decem sagitas, duos gladios, & totidem pugiones, in perturbationem pacis dictæ Dominæ Reginæ, ac terrorem populi sui, necnon in contemptum Statuti in dicto Breui specificati, manifestum: Ac proinde, dict. A.C. & D.E. vna cum armaturis suis arrestaui ac seisiui, & eorum corpora ad proximam prisonam dictæ Domina Reginæ in commitatu predict. duci feci, ibidem moratura donec aliud à dict. Domina Regina pro ipsorum deliberatione habuero in mandatis. Armaturas etiam eorum predict. appretiari feci, per A. B. C. D. & E.F. de B. predict. Yeomen, ad hoc iuratos: qui dicunt, quòd predicta duæ galeæ valent x s. Et quòd dict. arcus & 10. sagittæ valent, vj. s. Et quòd gladij predict. valent xx. s. Et quod dictæ pugiones valent. v. s. & sic quod armaturæ predict. valent in toto xlj. s. de quibus paratus sum respondere secundum tenorem dicti Breuis. In cuius rei testimonium, huic præsenti certificationi meæ sigillum meum apposui. Dat. apud B. predict. die & Anno supradictis.

By this you haue seene, what one Iustice of the Peace ought to doe in execution of this Statute as a Minister: and by the same you may also see, what he may do therein of him-

himselfe, *Ex officio*, as a Iudge, and without any Writte, brought vnto him.

For not onelie by the plaine wordes of the Statute of *Northampton*, the Wardeins of the Peace, haue power (wythin theyr Wardes) and are commaunded to execute this Acte vpon a paine: But also by expresse speach in the Commission it selfe, euerye Wardein of the Peace hath the Statute of *Northampton* committed to his charge. So that both in the matter and maner, the doing is all one, sauing that (if he doe it as a Iudge) he needeth not to make any Proclamation, the Statute being a prohibition in it selfe, nor yet to sende any Certificat into the Chauncerie, but only to make his owne Recorde of that which he shall do in this behalfe, and thereout to send some estreit into the Eschequer, that the Queene may be answered of the Armour, or of the value thereof. And here (perhappes) the redemption of the imprisonment maye be at the same Iustices discretion, euen as in the former Statutes of 15 R 2: & 8. H. 6. it seemeth to bee.

Of

Of other breaches of the Peace, with a multitude, as by *Riot*, *Route*, or other vnlawful *Assemblie &c.*

CAP. XIX.

OVr Parliaments, séeing well that the assemblie of manye for breach of the Peace, offereth more daunger and hurt, both generallye to the Commune wealth wherein it happeneth, and particularly to hym against whom it is bente, than the force of any one or two turbulent persons can bring, haue no lesse carefully endeauoured to suppresse the one, than wiselie foreséene & preuent and punish the other. And therfore, not onely the Commission giueth power to enquire of Conuenticles against the Peace, but sundrie Statutes also haue deuised manye meanes and paines to méete with, and to punish the same, wheras before they wer punishable only, as other trespasses, though some-

Conuenticles.

sometimes by a greater, and sometimes by a smaller, fine, as the case it selfe required.

But vnlawful Conuenticles bée not al of one sort: for sometimes those are called Cõuenticles wherein many do impart with others their meaning to kil a mã, or to take one an others part in al things, or such like: Champerties also, Maintenances, Conspiracies, Confederacies, and giuing of Liueries to other than to Menial Seruaunts and Officers, bée cõtained vnder the word Conuenticles, saith Mar. And it appeareth, (27. lib. Ass. Pl. 44) to bée one of the Articles enquirable in the Kings Bench, whether anye persons take others to their Auowment, & protection, and receiue of them rentes (or other gifts) yearely in the name of Chyuage (or rather Chiefage) bicause they séeme to take vpon them to bee their Chiefes, heads, or leaders. Chyuage.

But, for as much as all these couenantes may bée without any apparant shew of Assemblie againste the Peace (thoughe otherwise they bée finable offences vnder the name and calling of Conuenticles, as Mar. thinketh) I will leaue them, and resorte to those other that bring manifest terror to the Subiect.

Of these, some consist of a number of people

ple gathered togither disorderlie for ỹ cause of some one, or of a few persons, and do not breede anye general or present danger to the Estate or Gouernement, and yet bee against law, and be called Riots, Routs, and vnlawful assẽblies against the law, against which the Statutes 13.H.4.ca.7:2.H.5.ca.8:& 19.H.7.ca.13. were specially prouided: and before thẽ the penaltie of the Statute of *Nort.* 2.E.3.ca.3. was laide vpon them by 2.R.2.ca.6.

But others there be, that sauor of a more general disobedience, and bee (either in regarde of the nũber, or quarrell) a very Seede of Rebellion (if not the Weede it selfe) and are therefore also somtimes called Rumors, great Ridings, Routs, and Riots, against the Peace. 5.R.2.cap.6:7.R.2.ca.6:and 17.R.2.ca.2. sometimes Assemblies of people in greate number, in maner of Insurrection 2.H.5.ca.9. and sometimes Rebellious Insurrections and Rebellious Assemblies 15.R.2 ca.2:8.H.6.cap.14:and 1.Mar.Parl.1.ca.12. Of all which (so farre forth as the Iustices of Peace haue interest in thẽ) I will intreat, but yet seuerallie, and so, as either one, or moe of these Iustices haue to do with them, and that out of the Sessions.

They of the first kind bee, as I haue saide, commonly called Riottes, Vnlawful Assemblies,

blies, and Routs. But concerning the proper difference that is betwéen ech of these thrée, al men do not throughly agrée. And therfore (reiecting al diuersitie of opinions) I will follow that which I take to bée most colourable & most commõly receiued at this day: wherin neuertheless I submit my self vnto the experience of the Starchamber, as to the best guide and direction that the Iustices of Peace can haue to follow.

Riot séemeth to come of the French word Rioter, which signifyeth to braule, or scolde: for that commonlie Riottes in déede, doe follow of brauling in word. And it is taken to be, Where there is an vnlawfull assemblie of men (gathered togither) to committe an vnlawfull acte and they doe execute it indeede: as to beate a man, or to enter vpon a possession forcibly, or such like. Riot.

An vnlawful Assembly is the company of thrée persons (or more) gathered togither to doe such an vnlawful acte, althoughe they do it not indeede. Vnlawful assemblie.

Our Rout is ỳ same which ỳ *Germans* yet cal Rot, meaning a band (or great cõpanie) of men gathered togither, & going about to execute or executing in déed, any Riot, or vnlauful act. And (saith Mar.) it is said properly of the multitude that assemble thẽselues in such Route.

such disorderly sort, for their common quarrel: As if the inhabitants of a Township do assemble to pull downe a hedge or pale, to haue their Common, where they ought to haue none, or to beate a mã, that hath done them some publike offence or displeasure. But the Statute of 18.E.3.Sta.1. Whiche giueth processe of vtlagarie againste suche as bring Routs into the presence of the Iustices or in Affray of the people: And the Statute of 2.R.2.ca.6. that speaketh of riding in great Routs, to make entrie into landes & to beate others, and to take their wiues, &c. do seeme to vnderstand it more largely.

And it is a Route, whether they put their purpose in execution or no, if so be that they doe goe, ride, or moue forwarde, after their meeting. Broo Tit. Riot 4. & 5. So (as it seemeth) a Rout shoulde bee a speciall kinde of Vnlawfull assemblie: And a Riot, the disordered fact committed generally by anye vnlawful Assemblie.

Things Commune and considerable, in Riottes, &c.

Howsoeuer that bee, two things are commune both to Riot, Route, and Vnlawfull Assemblie: the one, that three persons (at the least) bee gathered togither, for so is it commonly taken at this daye, as I haue learned.

The other, that their being togither doe

breede some disturbance of the Peace, either by signification of Speach, shew of Armour, turbulent Gesture, or actuall and expresse Violence: so that either the peaceable sort of men bee vnquieted and feared by the Facte, or the lighter sort and busie bodies emboldned by the Example.

And, in these matters, not onely the Facte it selfe, but also the Maner of doing ỹ same, falleth sometimes iustly into consideration: in so much as, the lawfulnesse, or vnlawfulnesse, of the thing it selfe that is done or intended, doeth not alwayes excuse or accuse the parties to a Riot, Rout, or Vnlawful Assemblie, but so, that the Order and Circumstance of the doing, muste also bee brought into iudgement with it.

And therefore (saith Maister Marrow) the manner of the doing of a lawfull thing may make it vnlawfull: As, if many in one company (riding, or going, to the Sessions, Faire, Market, or Church it selfe) will ride, or goe armed, to the terrour of the people. And contrariwise, an Assemblie to doe a wrong (saith he) maye bee so handled, that it shall proue none of these offences: as, if I gather meete company togither, to carrye awaye a peece of Timber (which will not be moued without a good manye) whereto I pretende

right, though in Law it bée an other mans. And so also to do an vnlawfull thing: as if many do mœte to play at bowles, tables, or cardes, & doe vse no misbehauiour against the Peace, they are not punishable in thys degrée. And yet, if he that carrieth the pèce of timber away, wil vse dreadfull words, as to say, that he will carrie it in spight of hym that hath it, or that he will haue it, though he die for it, or such like, his doing may thẽ proue a Riot.

The maner and handling of a thing, may make it either blameworthy or blameless.

Furthermore, the intention and purpose, of those that bée assembled, is worthy the weighing. For, to vse harnes on Midsomer night in *London* or on May day in the countrie (for sport only) is no such offence, séeing no terror followeth of it, & the words *in terrorem populi* séeme to bée materiall in an Inditement of this kind. So if ỳ Shirife or hys Bailie doe leuie people to serue the Queenes Writs of *Capias* or if a Constable doe gather assistance of mẽ with weapõ to part an Affray it maketh no Riot 3.H.7.1.& 10. So if a mã (hearing that another wil fetch him out of his house & beate him) doe assẽble cõpany with force, it will bée no vnlawful assembly 21.H.7.39. And so also, if many be assembled, and none of them knoweth to what ende, it can make no Route nor Riot (as M. Marrow thought)

thought) til the intent be known. For if the Maister intend to make a Riot and take his vsuall seruantes with him, not foretelling them what he intendeth, & then committeth an outrage with thē, this is no Riot in thē: for although he shal bée punished, they shall bée excused. But otherwise it is, if he make them priuie to his purpose. Marr. & in the Report of Dalton. And in the former case, it is not materiall, whether hys number of seruants be aboue his degrée or no, so long as they be his Menials or household men.

And if a nūber of women, or infants (vnder the age of discretion) do assemble themselues for their own cause, this is no vnlawful assemblie punishable by these Statutes: But if a man of discretion cause them to assemble to commit an vnlawful act, thē it is otherwise saith Mar. And I remember, that not many yeres since womē were punished in the Starchamber, and that worthily, for that (hauing put off their seemly shamefastnesse, and apparelling themselues in the attire of men) they assēbled in great number, and Riotously pulled downe an inclosure.

If many be at an Alehouse, a Christmalle dinner, or Churchale, and (without any intention of an Affray) they sodainely fall togither by the eares, and make it *Lapitharum*

conuinium, yet this is no Riot, vnlesse they betake themselues to parts, for so it wil easily bécome a Riotous assemblie.

And if 12. Iurors (being committed to their kéeper) do fall out and fight, fire against fire, this maketh no Riot (saith Marrow) because they were lawfullye assembled, and were compelled to bé in company togither.

Finally, Marr. noteth, that if the Maior and Comminaltie of a towne doe assemble & make a Route in their common quarrell, this offence shal bé iudged and punished in their Naturall persons, & not in their body politike.

Thus farre you sée, what these offences bé, and in what maner they may bé committed: now therefore beholde what power one Iustice of the Peace hath ouer them.

The power of one *Iustice* of the Peace in Riotte, &c.

One Iustice of ỹ Peace, can neither make enquirie of a Rout or Riot, when it is done, nor assesse any Fine, nor yet award any processe for it, nor otherwise meddle with it (in the nature of a Rout or Riotte) but only as a Trespasse against the Peace, or vpon the Statutes of *Northampton*, or of Forcible Entries, before treated of.

And therefore, if he heare of any Rout, or of any intention of a Riot, he alone, or with his seruants, may go to the place, and suche as

as he findeth Riotteusly assembled and armed, he may arrest to finde Suertie of their good abearing, and may committe them to Warde, if they refuse to giue it, & take their weapons from them: And if he come to the place, and doe not finde them yet come thyther, he may leaue his Seruantes there, to make such arrest when they shal come: So also, if he bee sicke, he may send his seruants to the place to arrest them. And this is the iudgement of all the Courte, in the case of Sir Thomas Greene. 14. H. 7. 8. grounded vpō the wordes bothe of the Commission of the Peace, and of the Statute 34. E. 3. cap. 1 as I take it. But if one Iustice of ỹ Peace alone, will take vpon him to recorde a Riotte that he seeth, the party shal not be cōcluded therby: for he may trauerse it: and if the Iustice will commit one to Ward, pretending vntruely that he did a Riot, where he did none, an Action of trespasse lyeth for the partie against him Fitzh. Fol 18.

So that (vpon the whole matter) one Iustice of the Peace alone may do somewhat to preuent a Route or a Riotte, before it bee done, and for the staye of it whilest it is in doing, but nothing (in effect) to punishe it as a Riotte or Route, when it is committed and done. For (as Iudge Fineux sayth) in

that case of Sir Thomas Greene, the Statute (which I take to be that of 34 of E.3 cap.1.) was giuen as a hastie remedie, and for to preuent a mischiefe, being imminent and before the eye, and therfore the Law shall largely construe the auctoritie of a Iustice of Peace in that behalf: So that he shal neither nede to make any precept in writing, nor to expect the comming of his Companions, nor to be presente in his owne person, but maye vse al reasonable meanes for preuention and stay of the euill. And yet the ordinarie power of punishing Routes, and Riottes, resteth not in his hande, but rather belongeth to two Iustices of the Peace, as it shal hereafter appeare. In the meane time, I wil adioine somewhat out of the statutes of our owne age, the which seeing further into the perils that ensue of these vnlawfull conuentions, haue also prouided further, as wel in policie to preuent them, as in seueritie to punish them.

Rebellious and vnlawfull assemblies.

The statutes (1.Mar.Parl.1.ca.12: & 1.El c. 17.) do make three degrees of Riottous & Seditious Assemblies, in certaine special cases, the first, consisting of the commune number of three persons, & being vnder the number of twelue: the seconde of twelue persons or more: and the thirde of fortie persons and vp-

vpward: All which, are to be punished diuerslie, according to the number, intent, act, and obstinacie, of the parties assembled: wherin there is some imitation of an auntient law that King Ina made against theeues, whose degrees in offence he seuered & punished by their nũber also, saying thus: Þeofaf ge hatað oððe seofan men: fram seofan hlop oþ fif 7 þritti: and syþþan here: that is, Théeues we call them vntil the number of seuen men: from seuen, a Troupe, vntill 35: and an armie, aboue that number. But I will proceede.

One Iustice of the Peace therefore, may (by vertue of these statutes) make Proclamation in the Queenes name, that the persons (assembled in offẽce of these lawes) shal seuer themselues, and depart to their dwellings peaceably: and withal may (at his discreation) assemble hir Maiesties subiectes to take them: & may also take them indæde if they disobey, and shal be vnpunished for the hurting, mayming, or killing of any of thẽ, if they make resistãce. He also is to take the declaratiõ of any person, that (being moued to any such assembly) wil within 24 houres after reueale the same vnto him. Proclamation.

Here I must staye, and (for a time) go no further with these assẽblies, becaus the po-

wer of one Iustice of the Peace fayleth me, and ertendeth no further in them: the reste shall be disclosed, when order shall leade vs to intreate of the auctoritie of two Iustices.

VVhat other thinges one *Iustice* of the Peace alone, may do out of the *Sessions*, by vertue of Statuts mentioned in the *Commission*.

CAP. XX.

BEfore that I shal descende to shewe such further partes of power as bée gyuen to one Iustice of the Peace by latter Statutes, it shall not bée amisse to take in my way that remnaunt of his auctoritie whych lyeth in the firste *Assignauimus* of the Commision, and hath not béene yet fully applied to the practise.

The whole consisteth of such mẽbers as I haue already shewed, namely, of the Statute made at *Winchester* 13. Ed. 1. of the Statutes

tute made at *Northampton* 2. Ed. 3. cap. 3. the Statute made at *Westminster* 5. Ed. 3. cap. 14. the Statute mentioned to be made at *Cambridge* (but mistaken for *Canterburie*) 12. R. 2. the Statutes 1. H. 4. cap. 7: & 2. H. 4. cap. 21: of Liueries: and the Statute 3. H. 5. cap. 6. & 7. of counterfeiting & other falsifying of mony.

Of this laste Statute (as also of that at *Northampton*) I haue heretofore saide what I thought. Concerning *Winchester* & *Westminster*, I say shortlye, that by the forme of the Commission (as it is) one Iustice of the Peace may put the articles of them in execution: Firste, by commaunding fresh sute, huy and crie, and searche to be made by the Shirifes, Baylifes, and others, after theftes and robberies: watches to be kept for arresting of suspected persons, and nighte walkers: and highwayes to be enlarged: Then by seeing, that two Constables be in eache Hundred and Franchise: by forbidding Fairs and Markets to be holdē in Churchyards: by compelling suche as be betweene the age of fiftéene yeares and threescore, to be sworne to the Peace (for that also is in the Articles vppon the Statute of *Winton*) & lastly, by charging the Constables to arreste such as shall be suspected to be Drawlatches, Wastours, or Robertesmen, that is to saye,

either mychinge or mightie theeues, for the meaning muste remaine, howsoeuer the worde be gone out of vse.

The Statute of *Canterburie* (made chiefly for Artificers and Labourers, and partly for Vituallers) is repealed for the first, and runneth for the last in a generalitie. And as for that law, and those of H the 4. concerning Liueries, I see not what one Iustice of the Peace may well do towardes the execution of them, further than by commanding them to be obserued. For, the forfeiture groweth, either by Attainder vpon enquirie, or by Recorde of the Iustices in their presence, as the Statutes themselues do appoint: And these bothe doe require twoo Iustices, as the verie wordes thereof, and of the seconde *Assignauimus* in theyr Commission (beeyng in the plurall number) doe plainelye purporte.

For, I do not thinke that anye other maner of execution of these lawes (by one Iustice of the Peace) oughte to be gathered by any generall wordes of the first *Assignauimus* I know, that M. Fitz. in his Nat. Bre. Fol 82. saith, that albeit a Iustice of the Peace hath none expresse auctoritie wythin his Commission to take a Recognisance of the Peace, yet of Congruence it followeth, that

he

he may take it, because he hath auctoritie in plaine wordes, to cause the Peace to be kept and to compell men to finde suertie for the same: And it is a Rule of Law, *Concesso uno aliquo, etiam id concedi videtur, sine quo prius concessũ habere nequit:* But how far these things may be drawen, I will not determine, remembring, that this also is an other Rule, *In generali concessione non veniunt ea, quæ quis non esset verisimiliter in specie concessurus.*

But as I haue saide heretofore, A reformation of the prẽsẽt forme of the Commission. woulde easilie remoue al these doubts from vs.

This (to be plaine) I do not like, that one Iustice of the Peace shoulde take vpon hym to binde an offendour againste any Penall Lawe, (being within the power of Iustices of the Peace, but yet neither comprehended in the Commission, nor committed to the charge of anye one of them) to appeare at the Sessions, to aunsweare to his defaulte. For, althoughe I haue sẽne sundrie olde Precedentes of Attachmentes made from one Iustice of the Peace againste Labourers, to bee before the Iustices at their Sessions, to aunsweare to their contempts: yet I am not persuaded that the like maye bee done againste the offendours of other Statutes,

tutes, vnleſſe it be ſpeciallye therein ſo appointed, no more than it mighte haue bene done in that caſe of Labourers it ſelfe, had not the Statute of Labourers (25.E.3 cap.6.) expreſly commaunded it.

And I doubt not, but they of the laſte Parliamente were alſo of this minde with me: For if they had thought it generally laufull ſo to doe, they woulde not haue ſo ſpeciallye prouided for it, as you ſhall anone ſée in the notes of the Statutes, (23.Elizab.) againſte Slaunderous newes, and againſt the taking of Pheaſants and Patriches. And ſurelye, muche harme followeth of it, for it falleth out moſte commonlye in experience, that thoſe Iuſtices whyche be moſte buſie to take ſuche bondes, be no leſſe readie to releaſe them: and ſo (playing faſte and loſe) they kéepe (as it were) priuie Seſsions within their owne houſes, in whyche, bothe the Queene loſeth hir Fine, and the common wealth an example: and if the offendor loſe alſo, then that (belike) falleth to the ſhare of him that worketh the deliuerance.

And therfore, it were better (as I wéene) that ſuche offendors were firſte Endited, and then that Proceſſe were orderlye awarded againſte them, vntill that either they yéelded themſelues, or were taken, or outlawed.

lawed.

There is an other thing also, whereof I thought méete to admonishe the Iustices of Peace, in this place. Many of them doe vse to giue out their Precepts to attach persons suspected of Felonie, to the end to haue them brought before them: whiche thing is neyther newly deuised by them, nor done without colour: for they haue suche a Precedent in the olde Booke of Iustices of the Peace Fol. 41 and there is no doubte, but that if a Felonie be done, euerie man maye arreste whomesoeuer he suspecteth of it. But for all that, the whole Court (14. H. 8. 18.) condemneth such Precepts, because, if the Baylife, which serueth the Warrant, haue suspition in the partie, he maye of himselfe (wythout the Warrant) arrest him: and if he haue not, then is the Warrant of a Iustice of Peace no Warrant to arrest him, vnlesse he be endited before.

What

VVhat other thinges one *Iustice* of the Peace may doe out of the *Sessions*, by the power of other Statutes, not mentioned in the *Commission*: and therewithall of Manslaughter, and some other Felonies.

CAP. XXI.

Any one Iustice of the Peace.

SEeing the whole power of one Iustice of the Peace (as wel in the verie businesse of the Peace it selfe, as in the execution of some Statutes mentioned in the Commission) hath now at length bene rehearsed: It is conuenient to summe vppe such other partes of auctoritie also as other Statutes haue put into his handes, which done, wee will no longer treate of one Iustice alone, but wil associate some other vnto him.

Conseruatour of Riuers.

Euerie Iustice of the Peace is a Conseruator of Riuers within his Countie: (when he maye attende it) oughte to suruey the

Weares

Weares in Riuers, that they bée of reasonable wideneſſe, and ſhall ſuruey the offences of taking Salmons in any Waters (out of the Countie of *Lancaſter*) betwéene the Natiuitie of the Virgine Marie, and S. Martins daye, and (there) betwéene the feaſtes of S. Michaell, and the Purification of the ſaide Virgine: and of taking young Salmons at Pyll Powles, or other places, from the middeſt of April til Midſommer: and of caſting Nettes into anye Waters, (by whyche the fry of any fiſh may bée taken) and punish the ſame by burning of their Nets and engines. *Weſtminſt.* 2. ca. 47: 13. R. 2. ca. 19: & 17. R. 2. cap. 9.

One Iuſtice of the Peace may take vppon hym to heare and order the controuerſies, betwéene Maiſters and ſeruants, touching their departure, & may allow of the reaſon, & ſufficiencie of the cauſe, for which a Maiſter may put away his retained ſeruaunt, or the ſeruant may departe before the ende of hys terme: and may (in Hay time or Harueſt) vpon requeſt, and for the ſauing of Corne, graine, or hay, cauſe ſuche Artificers, and perſons (as be méete to labour) by his diſcretion, to ſerue by the daye, for the getting, cutting, inning, or carying therof, according to the ſkill and qualitie of the perſon, & may (vpon

Apprentices, ſeruants and labourers.

(vppon his refusall) imprison him in the Stockes by the space of two dayes and one night. And his testimoniall vnder his hande and seale to suche as may passe in Hay and harueſt time, from one Shire to another, is sufficiente. And he also vpon complainte made, may commit that partie to Warde, that in his iudgement shal be thought méet, & yet shal refuse to be bound as an Apprentice, according to the intent of the Statute, there to remaine vntill he be contented so to be bounde. And also may by his discretion vppon the complaint of the Apprentice, take order betweene his Maister and him, and for want of conformity in the Maysster, may binde him to appeare at the next Sessions before the Iustices, 5. Eliz. ca. 4.

Roages and Vagabonds.

If any suche person as is declared to bée a Roage, Vagabonde, or sturdie Beggar, by the Statute (14. Eliz. ca. 5.) being aboue the age of foureteéne yeares, shall be taken begging, or wandring, or misusing hymselfe, contrarie to that acte, and bée brought before a Iustice of the Peace, he is presently to committe him to the common Gaole, or to suche other place, as shal bée by the Iustices of the Peace, (or three of them) at their generall Sessions appointed therefore: to remaine there (without bayle, or mainprise)

prise) till the next Sessions of Peace, or generall Gaole deliuerie, whiche shall firste happen.

And the Register booke of the Powre within eache diuision of the Justices of Peace, is to remaine with one of the Justices of that diuision. And eyther of those two Justices before whome the Collectours for the powre are appointed to make their accoumpt, maye commit him (that shall refuse or neglecte to make his accompt, by the space of 14. dayes after requeste to him thereof made) to the nexte Gaole, there to remayne withoute baile or mainprise, till hee hath made it, and payde the surplusage of his receite 14. Elizab. ca. 5. Learne if the Register booke is to haue continuance still. Poore people.

Vppon information to anye Iustice of Peace, of any vnlawfull hunting by nighte, or with paynted faces, or other disguising (in Forreste, Parke, or Warreine) of anye person to be suspected thereof, that Iustice may make a Warrant to the Shirife, Constable, Baylife, or other Officer, to take the partie, and to haue him before him, or anye other Iustice of the Peace in that Countie, who may examine him of that hunting, and of the doers in that behalfe, and if he doe wilfully conceale that hunting, or anye per- Hunting.

ſon with him defectiue therein, then the ſame concealement ſhall be Felonie in ſuche concealour, but if he confeſſe the truth of all that he ſhall bée examined in that behalfe, then his offence of Hunting, ſhall bée but Treſpaſſe, and Finable at the nexte generall Seſsions of Peace there, 1. Hen. 7. cap. 7.

Vnlawfull games.

Euery Iuſtice of the Peace maye (as well within Liberties as without) enter into any common houſe or place, where anye playing at the Bowles, Coytes, Cloſh, Cayles, halfe Bowles, Tennis, Dice, Cardes, Tables, or at anye other game prohibited by anye former Statute (of whiche ſorte bée Fotteball, and caſting of the Stone by 12. R. 2. ca. 10.) or playing at anye vnlawfull game (alreadye inuented, or hereafter to bée inuented) ſhall be ſuſpected to be vſed againſt this Statute: and maye arreſt as well the kéepers of ſuche places, as the players there, and impriſon them vntill thoſe kéepers finde Sueries to the Quœnes vſe (to bée bounde by a Recognuſaunce, or otherwiſe) no longer to occupie anye ſuche playe or place, and that the perſons founde there playing, bée in like ſorte bounde by themſelues, or with Sueries (at the diſcreation of the taker)

taker) no more to playe, or haunte, at or to, anye of the sayde places, or at anye of the sayde games. And euerye Iustice of the Peace, finding or knowing anye person (not excepted by this Statute) to vse anye vnlawfull game, contrarye to this Acte, maye committe him to Warde, there to remayne without Bayle or Mainprise, vntill hée become bounde by Obligation to the Quénes vse (in a summe to bée thoughte reasonable to that Iustice) that hée shall not from thencefoorth vse suche vnlawfull Games, 33. Hen. 8. cap. 9.

Anye one Iustice of Peace (by the large wordes of the Statute) may enquire, heare, and determine by his discretion, as well by examination as otherwise, the offences committed in Tilemaking, and assesse the Fine therein limitted. And maye call before him (at anye tyme or place) suche as haue best knowledge in Tilemaking, and appoynte them Searchers of the sayde defaultes, 17. Edward. 4. cap. 4. But learne whether it bée so to bée taken, or no. Tile.

If anye Souldioure, seruing the Quéene in hir Warres, doe sell, giue away, wilfullye purloyne, exchaunge, alter, Souldiours selling horse or harnesse.

or put away, any Horſſe, Gelding, Mare, or Harneſſe, wherewith he ſhall be ſet forth, or which (being taken from any other ſouldior) ſhall be appointed vnto him, and doe eſcape the punishmente, which the Lieuetenant, high Admirall, the Kings Deputie, the Vice-admirall, Wardein, and Captaine, and their Deputies, in their abſence maye laye vppon him, by this Statute, then vppon complainte and due proofe of the offence to bee made by the owner, his Executors, or Adminiſtrators, to anye Iuſtice of Peace, where ſuche offendoure ſhall bee founde, he ſhall by him be committed to Warde, there to remayne (without Baile or mainprise) till he ſhall haue ſatifyed the owner, his Executoures or Adminiſtratours of ſuche Horſe, Gelding, Mare, or Harneſſe ſo ſolde, giuen awaye, &c. vnleſſe he bring with him before the ſame Iuſtice, ſufficiente teſtimonie from the ſayde Lieuetenaunt, or anye of the perſons aboue named (in writing vnder their Seale) teſtifying, that the ſayde Horſe or Harneſſe, was loſte in the Quéenes ſeruice agaynſte the will of that Souldioure, or was taken by anye of them from him for anye reaſonable reſpecte, and appointed to ſome other to ſerue withall 2. & 3. Edwardi 6. cap.2.

cap. 2.

If anye person (to whome anye *Agnus Dei*, Crosse, Picture, Beade, or such superstitious thing from the Sea of *Rome*, or the auctoritie thereof, shall bee offered or deliuered) doe disclose the name and dwelling (or place of resorte) of suche offerer or deliuerer, to any Iustice of Peace of that Shire, where he, to whome suche offer or deliuerie is, shall be resiante: then that Iustice muste (within fourteene dayes nexte after) declare the same to some one of the Queenes priuie Counsell, 13. Elizab. cap 2. *Agnus Dei.*

Euerye Iustice of Peace maye (within one Moneth after the speaking or reporting) committe to Warde, anye person, being vehementlye suspected of saying, or reporting of any slaunderous newes or tales, agaynste the Queenes Maiestie, (vnlesse he doe putte in Suerties to appeare at the nexte Quarter Sessions, or Gaole deliuerie) there to remayne, till he shall finde Suerties for suche his apparaunce. And maye also (within one Moneth after suche speaking, or reporting) receiue the accusation thereof, and putte the same, and the names of the Witnesses in writing, and certifie it at the next Slaunderous newes.

Quarter Seſsions or Gaole deliuerie, 23. Eli. cap.2.

Diſturbing of Preachers.

If anye Offendor (contrary to the Statute prouided agaynſte the Diſturbers of anye Preacher) ſhall bee arreſted and broughte befor a Iuſtice of the Peace, then hee (vppon due accuſation therevpon hadde by the ſaydе arreſtor, or other perſon) ſhall forthwith committe the partye ſo taken to ſafe cuſtodie, by his diſcretion. And within fiue dayes nexte after the accuſation, hee and one other Iuſtice of Peace ſhall, &c. 1. Mar. Parlia. 1.cap.3. But enquire, if all this Statute bee not repealed by 1. Elizab. cap. 2 in generall wordes at the latter ende thereof.

Egyptians.

Euery Iuſtice of the Peace may (within one Moneth after the arriuall) ſeaze all the goodes of anye outlandiſhe perſons (calling themſelues Egyptians) that ſhall come into this Realme: and maye alſo keepe the one moitie thereof to his owne vſe, making accoumpte to the Queene in the Eſcheaquer for the other moitie.

And euerye perſon that can proue by two credible witneſſes befor him that ſo ſeazeth, that any of thoſe goodes were craftilye, or feloniouſly taken from him, ſhall bee in-

con-

continently restored thereto before the partie that so sealed them, vppon payne of the double valewe thereof to bée forfeyted to such prouer, 22.Hen.8.cap.10. But note, that after the Moneth, the offence is made Felonie, and then it séemeth, the Quéene is to haue the goodes wholye, 1. & 2.Phil.& Mar. ca.4.

If any one Iustice of the Peace doe ioyne with the Clearke of the Peace, in taking the Inrolment of an Indenture of bargayne and sale of landes, tenementes, or hereditamentes, lying in that Countie where he is Iustice, it is sufficient, as it séemeth by the wordes of the Statute, 27. Henri. 8. cap.16. Inrolment.

Euerye Iustice of Peace maye examine and search (by his discretion) such as doe sell or set forth to be solde, any Candles, or other workes of Ware, at higher price than after the rate of foure pence the pounde, ouer the common price of playne Ware, betwéene Merchant and Merchant: and maye also punish them by forfeiture of the worke set forth to sale, and of the value of that whiche is solde, and by Fine to the King, 11.H.6.cap.12. as it séemeth by the large wordes of that statute. Worke of Waxe.

Anye one Iustice of Peace, is war-

Assises of Fewell.

ranted to sette on the Pillorie, in the nexte Market Towne to the place of offence, any person that hath broken the Assise of Fewell, and is conuicted thereof, and is not able to paye the forfeiture, there to be at eleauen of the clocke vppon the Market daye with a Billet (or Fagotte) bounde to some parte of his body, 7.E.6.cap.7.) but consider, whether a Iustice of Peace, may conuicte him of the sayd forfeyture, or no: for it seemeth by the wordes of the Statute, that hee is rather a Minister, than a Iudge in that case.

Repayre to the *Church.*

If any person (aboue fiftéene yeares of age) doe by the space of twelue Moneths, forbeare to repaire to some Churche, Chappell, or vsuall place of common Prayer, contrarye to the tenor of the Statute (1.Eliz. cap.2.) then any one Iustice of Peace of the Countie where suche offendor shall dwell or be, maye make Certificate thereof in writing into the Kinges Benche, to the ende, that the offender maye therevpon bee bounde in 200.*li.* at the leaste with sufficient suerties to the good behauiour for that his so long obstinacie, besides the other penalties 23. Eliza. cap.1.

Phesantes and Partridges.

Euerye Iustice of Peace maye examine offences againste the Statute made for preseruation

seruation of Phesantes, and Partriches, and against hauking in Corne (if the same offences be not before lawfullye heard, or determined otherwise) and may take bonde of the offendor with good suerties for his apparance at the next generall Sessions of the Peace, to aunswere to the sayd offence, and to paye the penaltie, or to receiue the punishmente due therefore: and may also after conuiction and punishment of such offender, in taking or killing Phesantes or Partriches, take like bond of him and suerties, that for the space of two yeares, he shall not offende against the sayd Statute 23. El. ca. 10.

It semeth that one Iustice of the Peace, may (vpon complainte of the partie greeued) examine the Shirife, Vndershirife, and Plaintife, concerning the taking or entering of plaintes in their Countie Courts and bookes against the Statute: And if hee fynde thereby any fault or offence committed, that shall stande for a sufficiente conuiction and attainder, without any further enquirie or examination: So may he also examine the Baylie of the Hundred for not warning of the Defendant in such a plaint, according to his precept from the Shirife or Vndershirife, and if thereby he finde any default or offence, that also shall stande for a sufficient condemnati-

Plaints in the Countie Courts.

on. And the sayd Iustice must Certifie those examinations within a quarter of a yeare into the Eschequer.

And further the *Custos Rotulorum* or the Eldest of the *Quorum* in his absence, oughte (at the generall Sessions after S. Michaell) to appoint two Iustices of the Peace (the one being of the *Quorum*) to haue the ouersight and controlment of the said Shirifes, &c. and of the amercementes. And one of those Iustices may examine (and without further enquirie) conuict the gatherers of the same, if they gather any more money than is contayned in their lawfull Eltreits, 11. H. 7. ca. 15.

Certificate of selling Corne.

The Certificate of one Iustice of Peace (ioyned with the Customer of the place) of the Vnlading and selling of Corne, Grayne, or Cattell, carried by Water from one place to an other of this Realme, vnto the Customer and Controller of the place where the same was imbarked, is sufficiente and ynough vppon the Statute of forestalling, 5. Edward. 6. cap. 14: & 13. Eliz. cap. 25.

Sanctuarie person.

One Iustice of Peace maye take oute of Sanctuarie, certaine persons abiured thither, and others being indited of some kynde of offences (mentioned in the Statute) done after

after they become Sanctuarie men, and may committe them to the Gaole in the Countie where the inditement is founde, till they bée tried, 22.H.8.ca.14.

Euerye person finding or séeing anye to offende the Statutes made agaynste the shooting in Crossebowes and Handgunnes, maye arrest and bring, or conuaye him to the next Iustice of the Peace of the Countie, wherein he was found offending, who (vpon due examination and proofe thereof before him made) maye by his discretion committe him to the Gaole, there to remayne till hée shall truely paye the one moitie of the forfeyture of this Statute, to the Quéene, and the other moitie to such firste bringer or conueyer. 33.H 8.cap.6. In this, and such other cases, ỳ Iustice of Peace, hauing (as it séemeth) the whole matter committed to himselfe alone, ought to be warye and circumspecte, leaste eyther he rashelye condemne the guiltlesse, or negligentlye suffer the guiltie to escape: And vppon the offence sufficientlye proued, it is necessarie that in his *Mittimus* (or precept to the Gaoler) there be contained the names of the parties, with the nature of the offence, and howe long time he is to be kepte in prison for it. Furthermore he is to make a Record of the matter, Crossebowes and handguns.

ter, and to send the Estreit of it into the Exchequer, whereby the Barons may vpon intelligence therof cause the Quænes duetie to be leuied to hir vse. The forme of the *Mittimus* maye be easilie fashioned by some other Precedents in this Boke.

And euerie person (other than such as are auctorised by value of a hundreth poundes in landes) ought, if he be auctorized to shote, and doe inhabite in the Countrey, to present his name to the nexte Iustice of Peace adioining. And therevpon the Iustice oughte to presente and record the same before the Iustices of the Peace at the next quarter Sessions 2.E.6.ca. 14. But learne of others, whether this parte is to haue continuance still, or else did onelie extende to such persons as had licence at that time.

Highwayes. The Superuisors for amendmente of the highwaies, ought within one moneth after any offence done by anye againste the Actes (2.& 3.Ph. & Ma.ca.8 : & 5.Eli.ca.13) to presente that offence to the nexte Iustice of the Peace: And therevpon he oughte to certifie the same at the next generall Sessions within the same Countie 5.El.ca.13.

Watermen. Euerie Iustice of Peace (as it seemeth) within the Shires next adioining to the River of *Thamis*, within his seuerall iurisdiction,

on, hath power vppon complainte made vnto him by the Ouerſeers and Rulers of the Whirrymen and Watermē, or two of them, or the maiſters of any ſuche ſeruauntes, both to examine, heare, and determine all offentes committed againſte the Statute, and to ſet at large him that ſhall be impriſoned, by the ouerſeers and rulers, if there be iuſt cauſe, and alſo by his diſcretion to puniſhe the ouerſeers and Rulers, that ſhall vniuſtlye puniſhe anye perſon, 2. & 3. Phil. & Mar. cap. 16.

Examination of Felons to be committed.

Euerie Iuſtice of Peace before whome any perſon (arreſted for Manſlaughter or Felonie or ſuſpition thereof) ſhall bee brought, ought (before he committe him to priſon) to take the examination of ſuche priſoner, and the information of thoſe that bring him, and to put the ſame (or ſo muche thereof as ſhall bee materiall to prowe the Felonie) in Writing within two dayes after, and to take Bonde of all ſuche as doe declare anye thing materiall to proue the offence, to appeare at the nert generall Gaole deliuerie, and to giue euidence there againſt the partie (2. & 3. Phi. & Mar. ca. 10.

The bond mētioned in this laſt ſtatute.

This bond ſpoken of in this Statute, and in ſome ſuch like, ſeemeth to bee mente of a Recognuſaunce, to bee acknowledged to the

the Queens vſe, with Condition for the performaunce of that, for which the Statute appointeth it to be taken. For (as before hath bene ſayd) euen as in the caſe of Suertie of the Peace and Good Abearing, the Iuſtice of the Peace taketh vſually a Recognuſance, and is warranted ſo to doe, being made a Iudge of Recorde as touching matters of the Peace, though he hath no full words for him eyther in any Statute, or in his Commiſſion: So, being auctoriſed by this Statute to deale in this matter, he may be wel ſayd to haue therin implied (by good Congruence) a power to Recorde the acknowledging of a ſumme of money to be forfeyted to the Queene, vpon not performing the Condition of the ſame.

The partie therefore that informeth againſt the *Priſoner*, may be thus bound, in a ſingle *Recognuſance.*

Kanc. *MEmorandū quod 3. die Septemb. anno regni Dominæ noſtræ Elizabe. dei gratia &c.* 23. D.E. *de* Braſted. *in cōmitatu prædicto* Yoman *perſonaliter coram me* Thoma Potter, *vno Iuſticiariorū &c. ad pacē &c. aſſignatorum conſtitutus apud* Braſted *prædict. recognouit ſe debere dicta*

dicta Domina Regina decem libras bona & legalis moneta Anglia, de bonis & catallis, terris & tenementis suis fieri & leuari ad opus dicta Domina Regina, hæredum & successorum suorum, si defecerit in conditione subsequenti.

Th. P.

And with suche a condition.

THE condition of this Recognusaunce is suche, that whereas one *A. B.* late of *G.* Labourer, was thys present daye broughte before the saide Iustice by the aboue bound *D.E.* and was by hym charged wyth the felonious taking of twentie Sheepe, of hym the sayde *D.* and therevppon sente by the sayde Iustice to the Queenes Maiesties Gaole: If therefore hee the sayde *D.* shall and will at the nexte generall Gaole deliuerie (to bee holden in the saide Countie) preferre, or cause to be framed and preferred, one bill of Inditement, of the sayde felonie, againste the saide *A B.* and shal and will then also giue euidence there concerning the same, as well to the Iurours that shall then enquire of the sayde felonie, as also

ſo to them that ſhall paſſe vppon the Triall of the ſayde *A.D.* That then &c. Or elſe &c.

The *Mittimus* of the Priſoner, after his examination may ſerue thus:

THOMAS POTTER, one of the Iuſtices &c. To the keeper of the Queenes Maieſties Gaole at Maydſtone &c. greeting: I ſend you herewithall the body of *A. B.* late of *C* Laborer broughte before me this preſent day, and charged with the felonious taking of twentie ſheepe, which alſo hee hath confeſſed vpon his examination before me. And therefore theſe ſhall be on the behalfe of our ſayd ſoueraigne Ladie to commaund and charge you, and euerye of you, that you doe immediately receiue the ſaide *A.B.* and him ſafely keepe in your ſayd Gaole, vntill that he ſhall be thence deliuered by due order of hir Maieſties lawes. Hereof faile you not, as you will aunſwere therevnto at your vttermoſt perill. Yeouen &c.

Here you may ſée (if I be not deceiued) the time when the examination of the Felon himſelfe, was firſte warranted by our Law. For at the Common Law, his faulte was

was not to be wrong out of himselfe, but rather to bee proued by others.

Whether the examination ought to bee vpon Oath or no.

Nowe because some Iustices of Peace doe (vpō this Statute) vse to take the information of the bringers of the suspected persons, vpon their Oaths and other some do receiue it without any Oath at al: Let vs see (by the way) what is wont to be said for either side, that a man may the better see what waye to encline and folow.

They that take the information, or examination (for this statute doth vse bothe the words) without any Oath do say, that if the makers of this Statute had meant that an Oath should be takē, then would they haue expressed the same, euen as the Statutes for Bankerupts (34.H.8.ca.4: & 13.Eli.ca.7.) the Statute of Accomptantes in the Exchequer (5.R.2.ca 13.) The Statute of Labourers (2.H.5.ca.4.) and the Statute of chosing Knights of the Parliamente 8.H.6.ca.7 haue done before: in al which Statutes, Examination by Oath is giuen in plaine wordes.

But they of the other side doe strongly defend their exacting of the Oathe, by the example of the Iustices of the higher Courts, and doe alleage, that whereas the Statute (5.H 4.ca.8.) ordained (without any mention of Oath) that in Actions of Debt vppon

arrerages of accompts, the Iustices shoulde haue power to examine the Attorneys & others, the Iustices of the Bēch do vse (in that case) to minister an Oath to the examinate, as it may appeare 19.H.6.4: & 35 H.6.5 The like (say they) hath bin done in old time vpon the Statute (18.E.1.) that giueth ỳ examination of a woman couert in leuying of a Fine. for (25.E.3.44.) a woman couert, partie to a Fine, was examined & sworne, whether she were of full age, or no: & the like also (as they say) is done daily, in all the examinations of Summoners, Viewers, Shirifes, Clearkes, and other Officers, that doe happen in the Courts at *Westmin.* And M. Brooke (Tit. Exami.32.) is of opinion, that euerie examinatiō is vpon Oath And the Statute 2.E.6. ca.13. that giueth power to the Ordinarie to examine a man for his personall tithe, excepteth an Oath, as thoughe otherwise he might haue exacted it.

Besides all this, they adde a reason, alleaging, that if these informers bee examined vpon Oath, then although it shoulde happen them to die before the Prysoner haue hys Triall, yet their information may bee giuen in euidence, as a matter of credite, whereas otherwise it would bee of little or no weight at all, and therby offendors should the more easly

eally escape.

And lastly (say they) the precise penning of some particular Statute, is no sufficient rule or warrant, whereby to vnderstand all other Statutes: vnto which opinion I my selfe could bee easily brought to subscribe.

Thus might (& woulde) I conclude this parte concerning the power of one Iustice, sauing only that this Statute doth giue me occasion to extend my speech a little further. For, whereas it requireth, that the Iustice of Peace should in taking the examination, make choice of such things as bee materiall to proue the offence, it seemeth necessarie, that he (being perhappes vnskilfull in the lawes of the lande) shoulde bee somewhat instructed what actes those bee, that doe amount to Manslaughter or Felonie meant wythin this Statute, and what other actes (though they carry some resemblance of the same) do not yet stretch so farre. Whereby also shall he the better know when to committe the party that shal be brought before him, & when he shal not need to medle at al wᵗ him.

What actes bee *Manslaughter*, or *Felonie*.

But I will onely deliuer him (so shortly as I can) those fewe helps that doe readily come to my hand, for knowledge of sundry Manslaughters and Felonies at the Common Lawe, leauing the Felonies (declared

by the Statutes) to appéere vnto him in the charge of the Sessions of the Peace in the next Booke, when I shall come vnto it.

Felonies touching the person.

The Statute (1. & 2. Phil. & Mar. cap. 13.) concerning the Bailemente of Prysoners (which gaue the occasion of the making of this present Acte) séemeth to distinguishe Murder, and other more capitall crimes frō Manslaughter & Felonie, And it is certaine, that in common spéech Manslaughter is taken to bée a special maner of wilful killing without any malice forethought: And Felonie is not commonly vnderstode to reach so high as vnto Murder. Howbeit séeing the principall purpose of this Statute is (in mine opinion) rather to bée practised in case of Murder, than in these other inferior offēces, I wil aduēture (though ỹ Statute haue not ỹ words (to mingle thē alittle togither, & to make it here (as in trueth it is) a chiefe kinde of Manslaughter & Felonie. For as in old time, euerie killing of a mā, was (of the Effect called Murder, because death ensued of it, (& of the Hebrew word *Moth*, saith *Festeilus* cōmeth the Latine *Mors*, which ỹ Saxons (our Elders) called Morþ & Morþor as we yet sound it) so was that wilfull maner of slaying with malice prepensed long

Morth *Morthor*

since,

since, and most properly called Felonie, because it was done *Felleo animo*, in malitious heat & displeasure, & therfore *per Felloniam* as the Statute at *Marlebridge* (cap.25.) doeth plainely tearme it.

Not euerie Manslaughter deserueth punishment (saith M. Bract) for in expressing that *Homicidium corporale, facto committitur quatuor modis. s. Iusticia, necessitate, casu, vel voluntate*, therwithal he addeth, that the first of these is no sin at all, if it bee done sincerely, & without delight in shedding of bloude. Foure sortes of Manslaughter. *Iustitia.*

And therfore, neither is the Iudge that by Iustice condemneth the guiltie to death, nor ỳ lawful Officer that executeth suche iudgement according to his warrant, guiltie of any offence, for wherby vppon examination they ought to be committed to prison.

But if the Officer will behead, or otherwise execute him, that is condemned to bee hanged: or if a priuate man (without warrant) will hang or kill a condemned or outlawed person, this wil bee a Felonious acte stretching to Murder, by good opinion 35.H. 6.58: & 27.lib.Ass.Pl.41.

And though the law hath bin taken heretofore, that one might iustifie the killing of a man attainted vpō a Premunire, yet now (the same beeing prohibited by 5.Eliz.ca.5.)

if such a fear be brought before a Iustice of Peace, he maye boldlye bee committed for a Felon.

Necessitate. In the second sort of Manslaughter (according to M. Bracton) as there bee many differences, so is the law also diuers in the consideration of thē. For, if a Iustice of the Peace within his Countie, or a Mayor, Bailiffe, or other head Officer of any Citie or towne Corporate, within the same town or Citie, or any other, hauing the Queenes Commission or Letters, doe lawfully assemble anye number of men, for the suppressing of anye persons, vnlawfully assembled, contrary to the Statute 1. Mar. Parl. 1. ca. 12. And (by reason of their continuing togither, after Proclamation made) be driuen to set vpon thē, and thereby any of the offendors bee slaine, this slaughter (done vppon thys Necessitie) is iustifiable, both in the Iustice hymselfe, & in euery other of his company, 1. Mar. Parl. 1. cap. 12.

So, if the Shirife, or anye other, doe by warrant, or vpon huy and crie made, arrest one indited of Felonie, which doth resiste, & is slaine thereby. This facte done vpon thys Necessitie is Justifiable 22 lib. Ass. Pl. 55: & Tit. Coron. Fitz. 288. 289. 290.

By the old Statute 21. E. 1. *De Malefactoribus*

floribus in Parcis, &c. If any Foreſter, Parker, or Warrener, or ſuch as bée in their cõpany (after huy & crie made vpon offendors within their charge to yéeld thẽſelues, whiche they refuſe to do, but flie and make reſiſtance) do without malice prepenſed, kill any of them, this is no Felonie, neither is the partie to be impriſoned, or to forfeite anye thing for it.

So is it if priſoners doe aſſault their kéeper, & he in his defence ſtriketh any of them to the death 22.lib.Aſs.Pl.55.

And ſo it is alſo, if any doe attempt to rob or murder one in his manſiõ houſe or dwelling place, or nigh any common high way, Cartway, horſeway, or foteway, or Feloniouſly to breake into his dwelling houſe in the night time, & in this their attempt, ỹ partie or his ſeruants (then with hym) doe kill any of ỹ miſdoers (though the law was ſomewhat doubtfull before) it is now made cleare by the Statute 24.H.8.cap.5 that hée ſhall not forfeite any thing for that facte, for in theſe caſes he in Neceſsitie defẽdeth himſelf & his goods againſt robbers & euil doers.

But he that in an Affray is of neceſſitie driuẽ to kil the other in defence of his owne life, after that he hathe fled as far as he can, is not ſo priuiledged: for although it be not

accounted Felonie, yet the Statute of *Glouc.* (cap.9) willeth, that such an one bee imprisoned til the comming of ỳ Iustices of Gaole deliuerie, and there (putting himselfe vpon God and the Countrey) the whole matter is to be found by verdite. And thẽ the King shal graunt him a pardon of Course, but yet he shall forfeit all his goods (43.lib.Ass.Pl.3) for killing of the Kings lawful subiect. And therfore the Iustice of Peace, may well (vnder the name of Manslaughter in this Statute) take vpon him (as I think) to commit such an offendour, and to take examination and bond of the informers accordingly

Casu. The like is to be done (as it seemeth to me) in case one kill another by misaduenture against his wil, as by casting a stone, or shooting an arrow, or felling of a tree vnaduisedly, or such like 11.H.7.23.

Voluntate. That Manslaughter which is committed with an euill intente, or in the doing of an other vnlawfull (or euil) thing, though that whyche is done was not premeditate, is doubtlesse within the wordes and meaning of this Statute: And muche more is that, which is (after such a sorte) cõmitted of prepensed malice.

If two do sodainely fall out, and thereupon drawe their weapons, and the one killeth

leth the other, this is Manſlaughter apparantly within the compaſſe of this law.

So, if one be in the companie of him that (of malice prepenſed) ſetteth vpō another to murder him, and doth of a ſodaine take the murderers parte, ſo that the other partie is ſlaine, this is Manſlaughter in him, according as the word is commonly vnderſtode.

And ſo is it, if two play at fence, or runne at the Tilte togither, and one of them bee ſlaine, For their firſte Acte was vnlaweful, vnleſſe it had beene by the Quēnes licence, ſaith Fineux. 11. H. 7. 23.

If one that is no Surgeon nor Phiſition, do take a cure vpon him, & the patient dyeth vnder his hande, that is felonie: Britton. Fo. 14. Otherwiſe it is, if he be a Phiſition, or Surgeon. Cor. Fitz. 163

And if A doth aſſault B. and ſtriketh hym, and whileſt B defendeth himſelfe, C. commeth to part them, and is ſlain by A. this is Felonie in A: But if they had both appointed the place (of purpoſe, to meete there, to fight one with the other) and C were ſlaine in ſeeking to appeaſe them, then will it bee Felonie in both the other, 22. E. 3. Coro. Fitz. 262. and in Dalz. reports.

If the mother deſtroy hir childe newely borne, this is Felonie of the death of a man,

though ỹ child haue no name, nor be baptized Cor.Fit.418. But if the child be destroied in the mothers belly, ỹ destroier is no manslayer, nor Felone, Coro Fitz.146.& 263.

The husband (minding to make away his wife) did by the aduise of B. offer hyr a poysoned Apple to eate, and she (not mistrusting any thing) gaue the same to her litle daughter that stode by in the presence of hir husbande, which childe he loued dearelye: the childe died thereof, and this was adiudged Murder in the husband, because he offred the poyson, and had then a wicked intent to kil therwith: But it was thought no offence at al in the wife, for that she (ignorant of the euil) simply gaue it to hir child, thinking it to haue bin holesome meat, 18.Eli.Pl.Cō 474.

And if a man lay poyson for Rats, and an other taketh it vnwares, and dieth thereof, this is not anye wayes to be layde to hys charge that layd it. *Ibid.*

If a mad man, or a natural fole, or a Lunatike in the time of his lunacie, or a childe that apparantly hath no knowledge of good nor euill, doe kill a man, this is no felonie: for that they cannot be said to haue any vnderstanding wil: But if vppon examination it fal out, that they knew that they did euill, then seemeth it to be otherwise: 21.H.7. 31.&

31:& 3.H.7.1.

If it appeare that the partie wounded, or poysoned, liued a whole yere and a day after the facte, then is it too late for the Iustice of Peace to commit the offendor to prison: for then it cannot be thoughte, that he died of that hurt, Cor. Fitz. 303. But it is plaine by 3.H.7.cap.1. that if any man be wounded in perill of death, the trespasser ought to be arrested, and put in safe keeping till perfecte knowledge bee had, whether the partie wounded will liue or die: and vppon suche a matter within the yere and day, the Iustice of Peace shal do wel to committe him. But this is a generall learning in all cases of Murder or Manslaughter, that the partie hurt, must be dead in trueth, before it bee in iudgement of law takē to be either of those offences: for *Voluntas* at this day is not construed for the deede it selfe, as in time past it hath bin put in vre.

Felonies touching the person and goods.

Hither of Manslaughter, that dealeth onely with the Person: other Felonies do stretch to goodes also, as Robberie whiche had the name at the first of Robe, because hee that with force spoyled a man, toke his robes or goods from him. And in this kind of Felonie, the law hath no cōsideratiō of ỹ value of the thing takē, because it is takē from ỹ person, so

Robberie.

so y it is Robberie, though it be but woꝛthe one peny. And Bracton calleth him *Furem improbum* and *prædonem, qui rapit rem alienam.*

If a man doe without anye title take my goodes againste my will lying in a place where I am pꝛesent, oꝛ doe manace to kyll me if I giue him not my purse, by meanes whereof I deliuer it vnto him, it is Robberie. Coron. Fitzh. 178. and 115.

So, if Thæues assaulte me in the hyghe way foꝛ my purse, and I cast it downe into a Bush, (as I flee from them) of purpose to saue it, and they take it vp.

Certaine persons toke a man, and compelled him (by manace of killing) to sweare vpon a Booke, to bꝛing them certaine money, and therevpon he bꝛought it them: thys was taken to be Robberie 44. E. 3. 14. But if a man lie in awaite to robbe me in the high way, and dꝛaweth his swoꝛd vpon me, willing me to deliuer my purse, and I defende my selfe, so as he hath not his wil, oꝛ I take him either by fight, oꝛ by huy and crie, this is not now taken to be Felonie (saith Stamford) because he hath not taken anye thing from me: and so is there an opinion 9. E. 4. 26. also. But yet the Law was otherwise holden 27. Ass. Pl. 38: & 13. E. 4. 7.

And now, seeing the benefit of Clergie is taken

taken from Pickpurses, and Cutpurses, by 8.Eli 4. let them also stand in this rancke.

A Burglour, whome Britton calleth a Burgeſlour, that by night breaketh into a house (with intent to Robbe, kill, or do other Felonie) though he cary nothing away, is a Felone, 22.Ass.Pl.95:& 27.Ass.Pl.38. So, if he do but breake open the house feloniously by night, though he enter not in (saieth Stãf Fo.30.) But if this be done by day, it is not taken to bée Felonie at this day without some further felonious acte done (saieth hée) yet the Booke Tit.Coron Fitzh. 178. & 185. doe not make any difference. And the Statute 1.E.6.cap.12. taketh away Cleargie and Sanctuarie, in case where one is conuicte or attainted of Breaking any house by day or by night, where anye person béeing in the same, shall be thereby put in feare, not speaking of any other fact. Burglarie.

Britton defineth a Burgeſlour to bée one that feloniously (in the time of Peace) breaketh open Churches, or other houses, or the wals, or Gates of Cities, or Burghs, wherof perhaps Burglars had their first name, whiche rather may be deriued of Bowre, that is, a Chãber, or inner roume, & Laron a théefe.

Burning of a house malitiously and wilfully, was Felonie at the common Lawe, as Burning of houses.

as appeareth by Bracton: *West.* 1.ca.15:10.E. 4.14:& 3.H. 7.10. And Bri (Fo.16.)saith, that such as burne houses, or corne, feloniously, ought to be burned.

One burned a barne felonioufly by night, which was adioyning to a houſe,and it was holden felonie at the Common Lawe,11.H. 7.1.And if a mans wicked intent were only to burn the houſe of A and therby the houſe of B.is alſo burned,the burning of this laſte houſe is Felonie, becauſe it enſueth of the fire that was firſt kindled,Plow Com.475.

Felonie of goods.

Other Felonies there bee of Goods onelie, called Larcinies, of the latine worde called *Latrocinium*,and theſe be puniſhable,eyther by death, or by diſcretion of the Juſtices: whiche difference groweth by the value of the thing ſtollen:for if it exceede not twelue pence, the fact is but *Petite Larcinie*, and the offendor is not to die for it, W.1.ca.15:Brit. F.22:Cor.Fitz.404.406. althoughe the Inditement ſhall ſuppoſe the facte to be done *Felonicè*,as in ỹ caſe of Mayheme 27.H.8.22.

But it ſeemeth by 8.E.2.Coron. Fitz.415. that if one be conuict of one petite Larcinie, and after committeth an other, and is conuicte thereof, and ſo of a thirde, all whiche valued togither,do amount aboue xy.pence, then for the laſte he ſhall ſuffer death, and

Brit.

Brit. maketh the third offence alwais death. If diuers ioyne in the stealing of goodes, amounting any thing aboue the value of xij. pence, it is Felonie, punishable by death in them all, Coron. 404.

Bracton defineth *Furtum* thus, *Contrectatio rei alienæ fraudulenta, animo furandi, inuito illo cui res illa fuerit.*

The wife therefore cannot be accounted a Felone, thoughe she steale the goods of hir husbande. 21. H. 6. Coron. Fitz. 456: And if she steale an other mans goodes by the compulsion of hir husbande, it is no Felonie in hir, 27. Ass. Pl. 40. But if she doe it at his commaundement onely, Bracton sayeth it shall not excuse hir. And the wife may of hir selfe committe Larcinie, and shal suffer for it, Coron. 383.

In some case a man maye bee hanged for taking his owne goods: as if he firste deliuer them to one to kepe, and craftily (of purpose to charge him) he stealeth them from hym, this is Felonie, by 7. H. 6. 43: 13. E. 4. 10: & 5. H. 7. 18.

If a man steale out of an other mannes ground, wilde beastes whiche be accounted *Nullius in bonis*, as Deere, Conies, Phesants, or Doues (being abroade at theyr libertie) or Fish in a riuer, this is no Felonie, 22. Ass. Pl. 95.

Pl.95. But if he take yong Pigeons in the house, or yong Goshaukes that can not flye out of their ayrie, or fishe out of a ponde, or truncke, it is Felonie. 18.E.4.8.

To steale Geese, Dockes, Hennes, Peacockes, or Turkies, is Felonie, for they bee domestical, and accounted *in bonis*. So is it of a tame Deere, if the stealer knew it to be tame: and so to take the flesh of any Deere (that is killed by another) (with a felonious intent) is Felonie: for these be then reckoned *in bonis*, and be valuable. But so to take away a Bore with Charters of lande in it, or a Warde, is no Felonie: for they bee not personal, but real goods, wherof there can be no Felonie committed, 10.E.4.15.

And therfore, if a man do with felonious intent, cut downe and steale away a tree, or corne that is standing, or robbe an Orchard of the fruite growing, it is no Felonie, being at that time in maner parcel of the ground, wherof no Felonie can be committed: but if the tree, corne, or fruite, were cutte downe, or gathered before, and left there, and then one stealeth them, it is Felonie, for that by the seuerance they were become Cattels, 18. H.8.2. & Cor. Fitz. 119. & 256.

If a man clippe the woll from my sheps backe, or doe kill my shepe, and steale the skinnes

skinnes, leauing the bodies behinde, this is Felonie of goods, Dalizon. For the verye Sheepe themselues were my goods, and might be stollen.

But the firste finder and concealor of Treasure found, although he keepe it with a felonious intẽt, or he that stealeth a Wreck of the Sea, or Waued goods, whilest they bee in that nature, seemeth not to bee chargeable in Felonie, by 22. Ass. Pl. 99. because the owner thereof is not then known.

If a man deliuer his goods to another to keepe, and hee doe fraudulently and wilfully consume them or conuert them to his owne vse, this is no Felonie, because *prima contractatio*, and the first possession was not *inuito domino*, but of his owne deliuerie. 13. E. 4. 10.

And yet it is holden, that if I bargayne with one to carrie certaine bales of Woade to *Crambrooke*, and he carrieth them to *Canterburie*, and breaketh the Bales, and taketh out the Woad, and conuerteth it to his own vse, that is Felonie. So if I deliuer a Tun of Wine to him to carrie, and he taketh the Wine out of the Tunne, it is Felonie. For here it may be sayde, that neither the very Woade, nor the Wine were deliuered him in that plight. But if he sell the whole Tun

of Wine, or the Bailes of Woad togeather, as he receiued them, then is it no Felonie, because he had them in that sort of the deliuerie of the owner, 13.E.4.9.&10.

If an Inkéeper set a péece of plate before his guest to drinke in, and he carieth it away with him, this is Felonie: For here the guest had no possession by the owner, but onely the vse of the thing, 13.E.4.9.

So is it if the guest do steale the shéets in which he lieth, and be taken ere he goeth out of the house, as in the hall, after that hée is come out of the chamber, Coron. Fit. 204.& Dalizon.

If a sheapheard steale the shéepe, or a Butler the plate, or an other man any other thing that is in his charge and kéeping, it séemeth by the Iustices (3.H.7.12.) that it shoulde not be Felonie, vppon the former reason, whiche séemeth to haue bene the antient lawe of the lande also: For Glanuill in his 10. Booke cap.13. sayth, *Quod Furtum non est, vbi initium habuerit suæ detentionis per dominum rei.* But because in some of these cases of seruauntes, there grewe muche inconuenience vnto Maisters, therefore 21.H.8.ca. 7. made it Felonie, if Seruauntes of the age of eightéene yeres that had any goods of their Maisters deliuerie, to kéepe to their vse, shoulde

shoulde fraudulently conuerte the same to their owne vses, to the intent to steale them, if it amounted aboue the value of fortie shillinges, wherein neuertheless Apprentices be excepted, this Statute being afterwarde discontinued, was reuiued 5. Elizab. cap. 10. whereof more shall be séene when we come to the charge. But thus much for this place and purpose (to giue some little direction to the Iustice of Peace) maye at this tyme suffise.

VVhat thinges any two *Iustices* of the Peace maye doe out of the *Sessions*.

CAP. XXII.

THe auctoritie and power of one Iustice of the Peace (without the Sessions) thus perused and passed ouer, let vs examin the like power of two, both in generalitie, and in particular.

It is vniuersally true, that whatsoeuer

thing one Iuſtice of the Peace alone is permitted to doe, eyther for the conſeruation of the Peace, or in the execution of the Commiſſion or Statutes, the ſame alſo maye bée no leſſe lawfully perfomed by two (or mo) Iuſtices, except it bée in a very fewe caſes, where ſome Statutes doe ſéeme ſpecially to appropriate the execution thereof to ſome one certayne Iuſtice, eyther in reſpecte that he is Next to the place, Eldeſt of the Quorum, or ſuch like.

The power of two Iuſtices of the Peace in puniſhing of Riots. &c.

But we will procéede by particularities, and becauſe the firſt place (of righte) belongeth to the Peace, (as wherein the office of this Iuſticer chéefely conſiſteth) lette vs here ſupply in two Iuſtices that power in puniſhing Riots, Routs, and Vnlawfull aſſemblies, whiche we ſayde before to be wanting in one: And that ſhall wée the better doe, if wée firſt of all lay open the Statute of King Henrie the fourth, contayning a moſte ample auctoritie, as wel for the repreſſing, as for the Recording of the ſame, and then adioyne ſomewhat out of ſome other Statutes.

IF any *Riot*, *Aſſemblie* or *Rout* of people agaynſte the lawe be made, the Iuſtices of Peace or 3. or 2. (at the leaſt) of them, dwelling

ling moſt nigheſt to the place,& the Shirif (or Vnderſhirif)of the Countie,ſhall come with the power of the Countie (if neede be)to areſt them,and ſhall arreſt them, & ſhal haue power to record that which they ſhall find ſo done in their preſence againſt the law: And by that Record ſuch offēders ſhall be conuicted,in maner and fourme as is cōteined in the Sttute of *Forcible entries*, (*viz.*15.R 2.c.2.) And if ſuch treſpaſſers bee departed before their comming,then theſe Iuſtices of Peace,or three,or two of thē,ſhal diligentlye enquire within a moneth after ſuch *Riot, Aſſemblie, or Rout* made: & ther-of ſhall heare and determine according to the law of the lande: and if the truth maye not be founde in the maner as aforeſayde, then within a month then next following, the ſaid Iuſtices and Shirif (or Vnderſhirif) ſhal certifie before the King & his Counſel all the deedes and circumſtaunces thereof, whiche Certificate ſhall be of like force as the verdite of twelue men,&c. And if ſuch offenders doe trauerſe the matter ſo certi-fied,then the Certificat and Trauerſe ſhall be ſent into the Kings Benche, to bee tried and determined as lawe requireth. And that the ſame Iuſtices and Shirife ſhall doe execution of this Statute,euery one vppon

payne of one hundred pounds, to be payd to the King, as ofte as they ſhall be founde in default. 13.H.4.ca.7

Maintenaunce and embracerie.

Wherevnto the Statute (19. Hen.7.) **addeth**, that if the ſayde Riotte, Route, or vnlawfull aſſemblie, be not found by the ſayd Iury, by reaſon of any mainteinaunce, or embracery of the ſayde Iurours: then the ſame Iuſtices and Shirife (or Vnderſhirife) ſhall alſo certifie the names of the maynetaynors and embraceors in that behalfe (if anye bee) with their miſdemeanoures that they knowe, vppon payne of euery of the ſayde Iuſtices and Shirife (or Vnderſhirife) to forfeite twentie poundes (if they haue no reaſonable excuſe) for not certifying the ſame: whiche Certificate ſo made, ſhall be of like force as before &c. And euery perſon duely prooued to bee a maintaynor or embraceor in the ſame, ſhall forfeit twentie poundes to the King, and ſhall bee committed to warde, there to remayne by the diſcreation of the Iuſtices. 19.Hen 7. cap.13.

Aſsiſtaunce.

Vnto alſo the Statute (2. Hen. 5.) **adioyneth further**, that the Kinges liege people (beeing ſufficiente to trauayle) ſhall bee aſsiſtaunt to theſe Iuſtices, Shirife (or Vnderſhirife) when they ſhall bee

bee reaſonablye warned, to ryde with them, in ayde to reſiſte ſuche Riots, Routs and Aſſemblies, vppon payne of impriſonment, and to make fine and ranſome to the King. Prouyded alwayes, that the ſayde Iuſtices, Shirife (or Vnderſhirife) ſhall doe their ſayde offices at the Kinges coſtes, in going, tarrying, and retourning, by paymente thereof to bee made by the Shirife, by Indenture betweene him and them, of the ſayde payment. And that ſuch Riottors attaynted of greate and haynous Riottes ſhall haue one whole yeares impriſonmente at the leaſte, withoute beeing lette oute of Priſon by Bayle, Maineprise, or in anye other manner, during the yere aforeſayd: and that the Riottoures attaynted of petite Riots, ſhall haue impriſonment as beſt ſhall ſeeme to the King and to his Councell, and that the fines of ſuche Riottors attainted, ſhall bee by the ſame Iuſtices encreaſed and putte in greater ſummes, than they were woont to be putte in ſuche caſes before that time, in ayde and ſupportation of the coſtes of the Iuſtices and other Officers aforeſayde in this behalf, 2.H. 5.ca.8.

At the Kinges charges.

Nowe, if it bee witneſſed by two Iuſti-

Capias and Proclamation.

ces of the Peace, and the Shirife, by Letters vnder their Seales, to the Lorde Chauncelour of *Englande*, that any murders, manſlaughters, batteries, robberies, aſſemblies of people in great number in maner of inſurrection, or other rebellious Riots, haue bene done, and that ſuche offendors haue withdrawne themſelues, to the intent to auoyd the execution of the common Lawe, then the Lorde Chauncelour may make a Writ of *Capias*, and therevpon (if neede be) a Proclamation, &c. 2. H. 5. ca. 9. **whiche Statute was made to endure till the nexte** Parliament, **and ſo diſcontinued: but it was reuiued by** 8. H. 6 **and made perpetuall: which moreouer ordayneth**, that (beefore this Writ of *Capias* ſhall be awarded) two Iuſtices of the Peace, and the Shirife of the Shire where ſuch Riot is ſuppoſed, ought to witneſſe, that the common voice and fame runneth in the ſayde Countie of the ſame Riots. 8. H. 6. ca. 14.

The Letter (or Text) **of theſe Lawes, béing thus layde downe, lette vs alſo ſée what expoſition and helpe** M. Marrowe **and others doe bring to ſome parts thereof, and namelye, to that of King** Henry **the fourth.**

Vnder the wordes, Power of the Countie,

tie, the Iuſtices, Shirife or Vnderſhirif ought to haue the ayde and attendance of Knights, and of all maner of Gentlemen, Yeomen, Laborers, Seruaunts, Apprentiſes, and Villaines, and ſo likewiſe of Infants, that be aboue fiftéene yeares of age. For all of that age were bound to haue harneſſe by the Statute of *Wincheſter*. But women, men entred into the miniſterie, and ſuch as be decrepite, or doe laboure of any continuall infirmitie, ſhall not be compelled to attende.

And it reſteth in the diſcretion of the Iuſtices and Shirife, or Vnderſhirife, howe many, or howe fewe, they will haue to aſſiſt them, in making the arreſt: But yet after ſuche arreſt made, the Power of the Countie is bound to goe with the Shirife to the Gaole, to ayde him thither alſo: whiche is otherwiſe in the caſe of a Felon taken by Hue and Cry, for there when the Countrie hath deliuered him to the Shirife, they are diſcharged, Mar.

This auctoritie of aſſembling the power of the countie, and of arreſting and impriſoning Riotters til due execution of law were done vpon them, was once before this time (namely 2. R. 2. c. 6.) committed to ſome, and was by & by after reſumed in the ſame yeare of the ſame Kings raign, as a thing too grée-

uous to be ſuffered, that any man ſhoulde be impriſoned without an Inditement (or *Sine legali iudicio parium ſuorum*, as *Magna Carta* ſpeaketh) firſt had agaynſt him.

But nowe, if information be made to two Iuſtices of the Peace, that certayne perſons bée riottouſly aſſembled at *Dale*, and they (aſſiſted with the Shirife, or Vnderſhirife) doe gather people to ſuppreſſe it, and when they come to the place, they fynde no Riotte there, yet are they excuſable for the aſſemblie of Power made by them, becauſe they did it vpon information. And if they doe it without information, and find a Riot indéede when they come, then ſhall they not onelye bée excuſed for making ſuche aſſemblie of their owne heades, but may alſo lawfullye proceéde to puniſhe the offendoures. Fitz 17.

Recording of the *Riot*.

And that puniſhmente muſt be grounded either vpon their Recorde of the thing done in their owne preſence, or elſe by enquirie vpon the oath of other men. And therefore, if two Iuſtices of the Peace (aſſiſted with the Shirife or Vnderſhirife) doe ſée a Riotte, they may commaund the Riottors to be arreſted, and maye recorde the Riot without other inquirie, and the parties ſhall be ſo concluded thereby, that they ſhall neuer be receiued to

Trauerſe,

Trauerſe, (or deny) it: But otherwiſe it is, if they doe not ſée it themſelues 14. H. 7. (as M. Fitz. Tit. *Iuſtice del Peace* 9. reporteth) who ſaith moreouer (in his Booke of Iuſtices of the Peace, Fo. 18.) that if they do ſo record a Riot, as though they had ſéene it, the parties ſhalbe ſtopped thereby, although there were neuer any ſuch Riot by them committed, for (ſaith he) the view of a Riot, is neuer to bée trauerſed. Likewiſe, if the Iuſtices of Peace be diſturbed by Riotors, in comming to their Seſsions, they may (without any Inquirie) make their record of it, Fitz. 17: & 7. E. 4. 18.

The Record which theſe Iuſtices ought to make, muſt be by writing, and muſt remain with the one of them: and they (and none other Iuſtices) ought to impriſon the Riotors, and to aſſeſſe their Fines, and cauſe the ſame to be eſtreated into the Eſcheaquer.

If they ſée the Riot and the Riotors eſcape, yet they ought to Record it: but then they can not arreſt the Riotors at another time: neyther can they make any Proceſſe vppon their Record, neither ought it to be kepte amongſt the Records of the Peace but muſt be ſent into the Kinges Benche, that Proceſſe may bée there made vpon it. And in that caſe the parties are not to be admitted to their Trauerſe there, but muſt of neceſſitie make fine for it.

If

If these Iustices come to see one Riot, and another Riot is made in their presence, they may Recorde that. So, if the Iustices and the Shirife, or Vndershirife, be assembled at a place for an Arbitrement, or suche other priuate cause, and a Riotte appeareth to be committed in their presence, they maye Record it also. But if the Riottours (seeing them comming) doe flie into another Countie, and do commit a Riot there, these Iustices cannot Recorde that Riot.

If the Riottors make a Riot vpon the Iustices and Shirife that do come of purpose to arrest them, they may Record that. And it seemeth that they may likewise doe so (though M. Mar. denied it) if they come for an other cause, and such a Riot be done vpon them.

If a man be slaine in the Riot, or Maimed, or if Rescous be done to an Officer, the Record must be, *Riotosè occidit*, or *Riotosè Mayhemauit*, or *Riotosè rescussit*, and not *Felonicè* nor simplie *Rescussit*: for their power in this case is restrained to the Riot only, and therefore the parties may (notwithstanding their Recorde) pleade not guiltie, to the Felonie or Rescous, though not to the Riot it selfe.

If they make a Recorde of a Riot, and do imprison the partie till he haue made Fine, and it doe afterwarde appeare by the Record

it

it selfe, that the Acte which they recorded, is no Riot, yet be the parties without remedie. And if a man be bound to the Peace, and such a Recorde of a Riot is afterwardes made against him and others, he shall not iustifie, nor plead, not guiltie, in a *Scire facias*, vpon his Recognusance, Mar.

But although these Iustices, Shirife, or Vnder-shirife, doe not goe to see the Riotte, yet maye the two Iustices enquire of it within the moneth after it: and they all are also to make Certificat within a moneth after that, according to the forme of the Statute. And albeit this Statute saye that the same Iustices shall doe it, yet if other Iustices of the Peace there doe it, that is sufficient, Mar. So that if two Iustices and the Shirife go to see a Riot, and other two Iustices make the Enquirie, now the one sorte or the other of them (with the Shirife or Vndershirife) may Certifie the same. Enquirie of the Riots, and certifie.

If this enquirie bee not made within the moneth, yet it is good, but then no good Certificat can be made thereof: So, if the Enquirie be within the moneth, and the Certificat not made within a moneth after, that is not good, Mar.

But if the Iustices doe enquire within the moneth, and doe giue daye to the Iurie, to

to yéelde their Verdite after the moneth, that is good ynough.

If the Enquest finde, that the Riot was made by xij. persons, where in déede it was made by C. persons, it may be certified so, and then the Certificat (and not the Inditement) shall be taken: but if they varie only in the daye, then the Inditement shall be preferred to the Certificat. And if the Inditement be of xij. persons, and the Certificat of xij. persons in harnesse, the Certificat shall be preferred. So, if the Inditement speake onely of a Riotous assault, they may Certifie of a Riotous assault, batterie, and mayheming.

If foure Iustices, the Shirife and Vndershirife, goe to sée a Riotte, and two of those Iustices and the Shirife ioyne in one Certificat, and the other two ioyne with the Vndershirife in another Certificat, that Certificat (whereunto the Shirife is partie) shall be preferred: for in his presence the Vndershirif hath none auctoritie. But yet if the Certificats be otherwise equall, then the best shall be taken for the Queene.

If (after the Riot séene, and the Enquirie made) one of the Iustices be putte out of the Commission, then cannot he Certifie. But if he had before Recorded the Riot vppon the view thereof, and the Rioters had escaped, yet then might he Certifie, Mar. The

The force of this Certificat is, but onlye to put the parties to aunſwere: and for aſmuch as it is of the nature of a declaration againſt them, it oughte to comprehende the certayne yeare and day, though peraduenture (as M. Mar. holdeth) it needeth not to expreſſe the Additions of the parties, being not within the wordes of the Statute, 1. H. 5. ca. 5.

Furthermore whereas this Statute ſpeaketh of the payne of C. *li.* to be layed vppon the next Iuſtices: Yet, if other than the next Iuſtices doe perfourme the office, that ſhall excuſe them that be the next Iuſtices to the place. And that is the cauſe why I haue taken leaue to place theſe things before, vnder the auctoritie of any two Iuſtices generally. Yea, all the Iuſtices of Peace within the Commiſsion, how far off ſoeuer they dwell, ought (if they haue notice of ſuche a Riotte, Rout, or Aſſemblie) to ſupply the defaulte of the next Iuſtices. For ſo it was nowe lately adiudged in the Starre Chamber. Howbeit that payne of an hundered pound was there layd vpon the nert Iuſtices only, and the reſidue were fined by diſcretion of that Court. Next Iuſtices.

Laſtlye, euerye of theſe Iuſtices ſhall be excuſed of this penaltie, by the not comming of the Shirife: But yet they oughte (in this ſeruice) to ſende for the Shirife, and not

not he for them, Mar.

Thus much of the Riots after this consideration: now a little for the furtherance of the Iustices in their execution, and then to other matters.

A *Precept* to the *Shirife* to warne the Countrie to enquire of a *Riotte.*

Kanc. GEorgius Multō,& Wilhelmus Lambard *duo Iusticiariorum &c. assignatorum, Vicecomiti eiusdem comitatus Salutem. Ex parte dictæ Dominæ Reginæ tibi præcipimus, quòd venire facias coram nobis apud I. in comitatu prædicto, 1. die Octob. proximè futuro 24. probos, sufficientes, & legales homines de comitatu prædicto, quorum quilibet habeat terras & tenementa, infra dictū comitatum liberè per chartam ad annuum valorem 20. solid. aut per copiam Curiæ ad annuum valorem 26. solid. & 8. denari. aut per vtrumque, vltrà omnes repriſas, ad inquirendum pro indemnitate noſtra in hac parte ſuper ſacramentū ſuū, Si* A.B.C.D.E.F. *& alij malefactores et pacis dictæ Dominæ Reginæ perturbatores ignoti, domū cuiusdam* G.H. *apud* Ightham *prædictā, riotosè fregerint, & in ipſum inſultū fecerint, & vulnerauerint, contra pacem dictæ Dominæ Reginæ, & contra formā Statuti in tali caſu, Ann.* 13. H. 4. *olim*

lim regis Anglia editi & prouisi. Et hoc nullatenus omittas sub pœna 20. *lb. quam incursurus es si in executione præmissorum defeceris. Et habeas ibi tunc hoc præceptum: Testibus præfatis* G.M. *&* W.L. 20. *die Septemb. Anno regni dicta Domina nostræ Eliz.a.* 23.

THE INQVIRIE.

INquisitio pro Domina Regina &c. (as before in forcible entries) *corã* Georgio Multon *&* Wilhelmo Lambard, *&c. Qui ad hoc iurati & onerati, dicunt super sacramentum suum, quod* A.B.C.D.E.F. *simul cum alijs malefactoribus, & pacis dicta Domina Regina perturbatoribus, ignotis, ad numerum septem personarum, modo guerrino arrayati, vi & armis, viz. hawberdis, gladijs, arcubus, & sagittis,* 19. *die mens. Sept. vlt. præterito, apud* Ighthã *in comitatu prædicto inter horas octauam & nonam, post meridiem eiusdem diei, Domũ* G.H. *de* Ightham *prædict.* Yeoman, *scituatã in* Ightham *prædicta, riotose fregerunt, & in ipsum* G.H. *tunc & ibidem insultũ fecerunt, ac ipsum tunc & ibidem verberauerunt, vulnerauerunt, & indignis modis tractauerunt, ita quod de vita eius desperabatur, in magnam pacis dict. Domina Regina perturbationem & populi terrorem ac contra formam Statuti de Riotis, Routis, & Congregationibus Gentium Anno* 13. H. 4. *olim regis Anglia progenitoris dicta Domina Regina, editi & prouisi.*

The Certificat to the Queene & hir Coũsell which ought to be made by the two Iustices and the Shirife, or Vndershirife, may be done in English, after the order of a Letter, and as the case shall require.

But the Record of the Iustices, and the Shirife or Vndershirife (if they wil proceede that way) may be in this manner.

MEmorandum quòd 20. die Septem. anno regni Dominæ nostræ Elizabe. dei gratia, &c. 23. Quæstus est nobis Georgio Multon & Wilhelmo Lambard, *duobus Iusticiariorum &c. assignatorum, &* Thomæ C. *Subvicecomiti comitatus eiusdem, quidam* G. H. *de* Ightham *in dict. comitatu* Yeoman, *Quod* A.B.C. D.E.F. *&c. & alij malefactores & pacis dictæ Dominæ Reginæ perturbatores ignoti, domum eiusdem* G. H. *apud* Ight. *prædict. riotosè fregerũt, & ibidẽ in ipsum* G.H. *insultum fecerunt, ac ipsum vulnerauerunt contra pacem dictæ Dominæ Reginæ, ac proinde petijt à nobis sibi in hac parte remedium apponi: Quibus quidem quærimonia & petitione auditis, nos dict.* G M.W.L. & T.C. *ipso eodem dicto die ad domum prædictam accessimus in propriis personis nostris, ac tunc & ibidẽ inuenimus præfatos* A.B.C.D. *&c. ad numerum septem personarum modo guerrino arraiatos, vz. gladijs, pugionibus, loricis, galeis, arcubus & sagittis, riotosè in simul aggregatos domum præfatam fregisse, multa*

multa mala in ipſum G.H. *ibidem cominantes, in magnam pacis dictæ Dominæ Reginæ perturbationem, ac populi ſui terrorem, necnon in contẽptũ Statuti de Riotis, Routis, & congregationibus populorum Anno* 13.H.4. *olim Regis Angliæ, progenitoris dictæ Dominæ Reginæ, aditi ac prouiſi. Ac propterea nos prafati* G.M.W.L. & T.C. *corpora dictorũ* A.B.C.D. *&c. arreſtari, ac proximæ Gaolæ dictæ Dominæ Reginæ in comitatu prædicto duci fecimus, per Recordum hoc noſtrũ conuict. in præſentia noſtra. In cuius rei teſtimonium, nos præfati* G.M. W.L. & T.C. *huic dicto recordo noſtro, ſigilla noſtra appoſuimus, Datum apud* Ight. *prædict. die & anno ſupradictis.*

Thus farre of Riots, now let vs proceede to other Statutes.

Any two Iuſtices of the Peace, (vpon cõplaint, that any ſeruant reteyned by the ſtatute departeth before the ende of his terme, or at the ende thereof without a quarters warning, or that any perſon compellable by the Statute to ſerue, doth refuſe to ſerue for the wages appointed) may examine the matter, and (finding ſuch ſeruant, or perſon faultie) may commit him to warde, there to remaine, till he ſhal be bound to the partie offended, to ſerue and continue according to the Statute: They alſo, may impriſon for 3. dayes, the Maiſter that giueth, and for 12. Seruants & Labourers.

dayes the ſeruant that taketh, more wages than after the rates thereof made: and may impriſon for a whole yeare, ſuch ſeruant, as ſhall bée Conuicted before them by his owne confeſſion, or by the Othes of two honeſt men, to haue made any aſſault vpon his Maiſter, Maiſtreſſe, or other perſon hauing the charge of him, or of the worke: and they may appoint any woman (being vnmaried, of the age of twelue yeares, and vnder fortie) that is out of ſeruice, and that they ſhall thinke méete to ſerue, to bée retained by their diſcreation, and may vpon hir refuſall commit hir to Warde, till ſhe will bée ſo bound to ſerue. 5. Eli. ca. 4.

Begge for fees. Roage. Seruingmé.

Any two Iuſtices of Peace, may licence ſuch as bée deliuered out of Gaoles to begge for their fées, or to trauel to their Countrie, or friendes: and may giue licence for fortie daies to a Roge that is marked: & may make teſtimoniall to a Seruingman, that is turned away from his maiſter, or whoſe maiſter is deade: 14. Eli. ca. 5: & 18. Eli. ca. 3.

Surcharged with poore.

Such two Iuſtices may certifie at ỹ Quarter Seſsions that a Citie, or Towne Corporate, of the Shire (being no Countie of it ſelf) is ſurcharged with poore, togither with the names and number of them, that order may bée taken there for their relieſe: & they may

maye Licence diseased persons (liuing of almes) to trauell to Bathe, or to Buckstone, for ease of their griefe. 14. Eli. ca. 5. Licence to goe to *Bath* or *Buckstone*.

By the ouersight of two such Iustices and twelue discrete men of the Hundred & Hundreds adioyning, any person (within the Weald of *Kent*) maye make in his owne lande a newe highway, more commodious than the olde, 14. H. 8. ca. 6. Chaunge a high way.

Two such Iustices may once euery yeare appoint Ouerseers for that whole yeare following of Cloth to bee made or sold, in any towne (not being Corporate) & may charge them vpon their oathes, to see execution of some partes of the Statute. 3. E. 6 cap. 2. yet in force. Appoint Ouerseers of Cloth.

Within fiue dayes after accusation had, that any person hath disturbed a Preacher, and after his committing to safe custodie by one Iustice of the Peace, one other Iustice of that Shire must ioyne with him in the examination of the Offender, and may proceede to finde him guiltie by his owne confession, or two witnesses, and thereupon commit him to the next Gaole, for three monethes 1. Mar. Parl. 1. ca. 3. Aske of the continuance of this Statute, as before. Disturbe a Preacher.

Any two Iustices of the Peace of the Countie, where any Logwood (*alias* Block- Logwood.

wood) shall be founde (in whose handes soeuer it bée) may openly burne the same, as forfeited. 23. El. cap 9.

If any person, that ought to be set to the subsidie, doe by his craft or couine escape the Taration, and that bée proued before two Iustices of Peace of that Countie, then shall he bée charged at ỹ double value of so much as he ought to haue bene tared at, and shal further be punished at the discretions of the sayd Iustices. 23 *El. Reg.* and diuerse former actes of subsidies.

What thinges, some two Iustices of the Peace may doe out of the *Sessions*: and therein of Bailement, Murder, and accessories to Felonie.

CAP. XXIII.

IT falleth out manye tymes that the Statute lawes regarding some Iustices aboue others, either for the opinion of the ability or learning that they should haue (being of the *Quorum*) or for the aduantage and facilitie that they haue to dispatch the affaire by meanes of their nearenesse & dwelling, or for

for the indifferencie that they are likely to vse in ỹ handling of the cause (as being neither of kindred nor alliance to any of the parties) do many times make choise of some two Iustices, and doe either altogither close the hands of the rest, or else do chiefly repose the trust in these that bee so chosen & elected.

Among those of this kind, the Statute for Bailemēt of prisoners worthily claimeth the first place, whether you respect the weight of the matter that it concerneth, or the length of the discourse that it requireth, the one tēding to desired libertie, and the other comprehending great varietie.

This sauing then, or deliuerie of a person out of prison, before he hath satisfied the Law, is vttered by three termes in our Statutes, that is to say, Bailement, Mainprise (or manucaption) and Repleuine. And they bee indifferently vsed to expresse that suertie which the prisoner is to finde in such a case: For that which Bracton and the Statute of W.1.cap.15. (made 3.E.1.) doe speake, of setting at libertie of Accessories by the wordes *Replegiari*. and of letting out by sufficient Pleuin: Britton and the Register doe expresse by finding of Mainprise: the Statute 5.E.3.cap.8. by letting to Baile: that of Marlebrige cap.27. (made 52.H.3.) by *tradi in*

Difference betwene *Bailement*, *Mainprise*, & *Repleuine*.

ballium, vel Replegiari. And the Statute of 1. E.3.ca.9. making mention of the writ *De homine Replegiando* to bee directed to the garden of a Forest, declareth the effect therof to be, that he should Repleuy the prisoner by good Mainprise. The Statute 23.H.6.ca.10. that commaundeth the Shirife to let out of prison (such as he hath arrested vpon Enditemẽts of Trespasse) vpon reasonable suertie of sufficient persons, calleth the same a letting to Baile or Mainprise. And lastly 1.& 2. Ph.& Mar.ca.13. seemeth to make al the three wordes συνώνυμα & of the same signification.

Neuertheleſſe it ſeemeth, that Repleuine had his original of the word Pledges, which denoteth them that vndertake for the partie, that he ſhal abide to be iuſtified by law: And it is vſed in diuerſe other caſes, as in Repleuine of Cattel vpon a diſtreſſe, Repleuine of Franchiſes in a *quo Warranto*, Repleuine of Land vpon a *Grande Cape* in olde time, and Repleuying of the perſon of a man in caſe of Villenage.

Baylement, is deriued from the French tearme Bailler: And that alſo commeth of the Greeke (βάλλειν) they bothe ſignifying to Deliuer into hand: For he that is Bailed, is taken (or kept) out of priſon, and deliuered (as it were) into the handes of his friendes

as

as Suerties for him, whereof also the worde *Manucaptio* (or Mainprise which is all one) giueth good euidence, the one mentioning the deliuerie, the other the receiuing. And in this respect, the Booke of the *Norman Customes* calleth Bailement, a liue prison, for that the party thereby becommeth prisoner to his friends that doe vndertake for him.

But Bailement and Mainprise haue bene taken to differ in the practise of our Common lawe; for he which is properly Bailed by the Iustices of any Court, hath bene neuertheleſſe reputed to bée a prisoner there still, and his suerties to bée (as it were) his speciall gardeins: otherwise it hath bene thought of him that is let to Mainprise, as may bée séene by the Booke cases 33.E.3: & 36.E.3.Coron.Fitz.12.& 13: 7.H.6.42: 31.H.6. 10:38.H 6.23:9.E.4.2:& 21.H.7.33. But at this daye, how long he shall bée adiudged to bée a prisoner, *Et in Custodia Marisealli Mariscalcia, &c.* that is Bailed in the Kinges Bench, the custome of the Court it selfe must rule the matter: for it differeth somewhat (if I bée not deceiued) from those opinions.

Howbeit, forasmuch as in our course (cõcerning Iustices of the Peace) it is not so néedefull to stay vpon the differẽce betweene them, as to procéede to disclose the vse and

maner of them: Let vs examine the power of the Iustices of Peace in this behalfe.

It seemeth, that Iustices of the Peace might (after the Statute of 34.Ed.3.ca.1. that made them complete Iudges) haue letten to baile such persons as were indited of Felonie before them in their Sessions, euen as the Iustices of the Kings Bench vse to doe, but not such as were arrested for suspition of Felonie, and not endited thereof before them, because before the enditement they were no Iudges ouer them: And for helpe herein, it was ordayned (1.R.3.cap.3.) that euery Iustice of Peace might let to Baile any suspectes of Felonie. But that Law begatte some inconueniences, and therefore it was sone after repealed (by 3. H.7. cap.3.) which left power to two Iustices of the Peace (the one being of the *Quorum*) to let any prisoners (mainpernable by the Law) to baile to the next general Sessions, or the next Gaole deliuerie, & willeth, that they shal then certifie such baile taken, vpon paine to forfeite for euery default (therevpon recorded) ten poundes, to the King. 3.H.7 cap.3. And here againe there sprang vp an other inconuenience: for then Iustices of Peace would not sticke to borrowe one an others name, (as many yet still doe) and by that meanes de-

frauds

fraude the good meaning of the Statute: Wherevpon it was lastly further prouided (by 1.& 2.Phil.& Mar.) as followeth:

Bailement of prisoners, and examination before they be bailed.

That no Iustice nor Iustices of Peace, should let to baile any person contrarye to the sayd Statute of *West.* 1.cap.15. And that no person,being arrested for Manslaughter, or Felonie,or for suspition of either of them, (being baileable by the Law) should be bailed,by any Iustice of Peace,if it bee not in open Sessions,or by two Iustices of the Peace at the leaste (the one of them being of the *Quorum*) and the same Iustices to bee present togither at the time of the sayde Bailement: and that they shall certifie (in writing,subscribed,or signed, with their owne handes) the sayd Bailement or Mainprise,at the next generall Gaole deliuerie,to be holden within that Shire, where that person shall be arrested,or suspected: And that the sayd Iustices,or one of them, (beeing of the *Quorum*,) when suche prisoner is brought before them for Manslaughter or Felonie, shall before any bailement)take the examination of that prisoner,and the information of them that bring him,of the facte and circumstaunces therof,& the same,or so much thereof, as shall bee materiall to proue the Felonie, shall put in writing beefore they make

make that Baylement: which examination and baylement, the ſayde Iuſtices ſhall certifie at the next Gaole deliuerie within the limites of their Commiſsion: And the ſayde Iuſtices ſhall haue auctoritie by this Acte, to binde all ſuche by Recognuſance (or Obligation) as doe declare anye thing materiall to proue the ſayde Murder, or Manſlaughter, offences, or Felonies, or to bee Acceſſorie or Acceſſories to the ſame, as is afore ſayde, to appeare at the ſayde next Gaole deliuerie, where the triall thereof ſhall bee, then and there to giue euidence againſt the partie, at the tyme of his tryall, and ſhall certifie all and euerie ſuch bonde, in like maner as is aboue ſayde of the Bailement and examination, 1.& 2. Phil.& Mar. cap.13.

This Statute of Bailement **I haue purpoſely recited at large, becauſe it both comprehendeth ſome ſuch other things as muſt concurre with the** Bailement **of the priſoner, & prouoketh me to ſet downe the Statute of** W.1. **and to ſhewe what perſons bee** baileable by the Law: **for, to either of theſe it referreth it ſelfe (as you haue ſeene) and is alſo reſtrained by them.**

Perſons, baileable, and not.

Nowe, by the Statute of W. 1. cap. 15. Priſoners that bee before outlawed, or haue abiured;

abiured: prouours: felons taken with the maner: thoſe that haue broken the Kinges priſon: notorious and proclaimed theeues: thoſe that are appealed of prouours, ſo long as the prouours bee liuing (if they be not of good fame:) thoſe which are taken for felonious burnings, or for falſifying the Kinges mony, or his Seale: or which are taken vpon excommunication, or for open euill, or for treaſon touching the King him ſelfe, or for the death of a man, or by the commaundement of the King him ſelfe, or of his priuie Counſell, or by the (abſolute, and not ordinarie) commaundement of the Kinges Iuſtices, or for the Foreſt: bee not repleuiſable by the common Writ, nor without Writ, by Shirifes, nor other gardines of priſons. But hee that is taken for light ſuſpition: or is indited of *petite Larcinie*, (not beeing guiltie before of other *Larcinie:*) thoſe that bee charged with the receit of theeues, or felons, or of commaunding, or force, or ayde: or charged with Treſpaſſe, that toucheth not loſſe of life, nor member: and he that is appealed by a Prouour (beeing no common theefe, nor defamed) after the death of the Prouour, is bayleable by that Statute.

Againe, the Statute 23. H.6. cap. 10. prohibiteth

hibiteth thoſe that be in priſon by cõdemnation, execution, *Capias vtlagatum*, excommunication: for Suertie of the Peace: or by ſpeciall commaundement of any Iuſtice, to be bailed, by Shiriſe, Keeper of priſon, or other Officer or Miniſter: But willeth and cõmaundeth, that all thoſe that be *Arreſted* by force of any Writ, Bil, or Warrant, in any action Perſonall, or becauſe of any enditement of *Treſpaſſe*, be let out of priſon vpon reaſonable ſuerties of ſufficient perſons hauing ſufficient within the Counties where they bee to bee let to Baile or Mainpriſe, to keepe their dayes in ſuch places as the ſayd writtes, Billes, or Warrants ſhall require.

Both theſe laſt Statutes (as appeareth) were at the firſt ment to giue a rule vnto Shirifes and other meaner Officers, in what caſes to let their priſoners to Baile, and in what not. But as the Statute of W. 1. is by the expreſſe letter of 1. & 2. of Ph. & Mar. ſet forth as a line wherby the Iuſtices of Peace are to guide them ſelues: ſo it ſæmeth to me, that they ought to haue an eye vnto the other Statute alſo, for aſmuch as certaine other perſons bee therein alſo mentioned not to be Baileable by lawe, and ſo within the reach of the very wordes that lye in the Statute

Statute 1.& 2.Phil.& Mar.cap.13.

Nowe this Statute of 1.& 2.Ph. & Mar. ſeemeth (as hath bene ſayd before) to diſtinguiſh betweene Murder, and Manſlaughter, making this offence Baileable, but not the other: So as it ſeemeth to reſtraine the generall wordes (death of a man) in the Statute of W. 1. to bee taken and vnderſtoode of Murder only. Beſides this, it maketh mention of the Bailement of Acceſſories, whereof the Statute 2. & 3.Ph.& Mar.cap.18. hath neuer a worde. And therefore I will here craue licence, that I may diſcloſe ſome fewe caſes concerning theſe matters, to giue (as my manner hath bene) ſome glimmering light to ſuch Iuſtices of Peace as be not thorowely grounded in the principles of our Lawe, whereby to diſcerne and iudge the better, how to graunt, or gaineſay, the ſute for Baile that ſhall bee made vnto them.

Manſlaughter baileable, and not Murder.

Now therefore, if one doe ſuddenly (and without any occaſion of preſent quarrell) drawe his ſworde, and therewithall kill an other that ſtandeth by him, this can not be thought but to haue bene done of a premeditate purpoſe, and therefore hath bene taken to bee Murder. Daliſon in his Reportes.

And ſo is it taken if two fall out, and doe appoint

appoint a place to fight togither, and there the one of them killeth the other, *Ibid.*

If a man assaulteth the Maister, vpon malice prepensed to kill him, and he killeth the seruant, against whome he had no malice at all, yet is this Murder, Plowd. Com. Fol. 101.

But if the Maister assaulteth one vppon such malice, and the seruant (not foreknowing the matter) taketh his Maisters part, and killeth the partie, it is but Manslaughter in him, though it be Murder in the Maister, *Ibid.* Fol. 100.

If one lieth in awaite to kill an other, and a thirde person commeth by, and so (by mistaking) is slaine for him, whose bloude was thirsted after, this is Murder: for it was grounded vpon malice prepensed, euen as in the case that hath bene remembred heretofore of the intent in the husbande to poyson his wife, whereby (in a manner against his will) his childe was poysoned, *Ibid.* Fol. 474.

Brooke Chiefe Iustice was of opinion, 4. & 5. Phil. & Mar. That in all cases, where a man alone, or with other, commeth to doe an vnlawfull acte to an other, as to beate him, or to diseise him of his land, &c. and killeth him in that doing, it is Murder: But if

if it happen a ſtranger be killed there, that then it is but Manſlaughter. And Dalizon agréeth with the firſt part of this opinion.

And he further repoꝛteth, that if a mayden ſeruaunt doe conſpire with a man to rob hir maiſtreſſe, and in that doing they kil her, this is only Murder in the man, though it be petit Treaſon in the maiden.

Acceſſaries to all manner of Felonies, bée baylable by the ſtatute W. 1. in theſe woꝛds, Thoſe that be charged with the receite of Theeues or Felons, or of commaundement, or of force, or ayde thervnto.) And M. Stamford. F. 71. affirmeth, that thoſe alſo which be charged with abbetment, conſent, oꝛ procurement, be within the equitie of the ſame woꝛdes. Acceſſaries.

This ſtatute thereſoꝛe ſéemeth hereby to make thꝛée ſoꝛtes of Acceſſaries: ſome, to bée beſoꝛe the offence committed, as Commaũders, Abbetters, Conſenters, and Procurers: ſome at the déede doing, as thoſe that then giue force oꝛ ayde thervnto: and a third ſoꝛt of thoſe that receiue the Felons, and comfoꝛt them after the Felonie committed.

But, foꝛ as much as the ſecond ſoꝛt of theſe acceſſaries be at this day accounted as déeps offendoꝛs as the very pꝛincipal himſelf, therfoꝛe (in mine opinion) in all ſuch caſes wherein

he is not to be bailed by law, they also ought to remaine in prison still, notwithstanding any words of this statute.

Now, to know such an Accessarie (as the law is taken at this day) & to discerne him also frō a principall, let these fewe cases suffise.

If one procure, or commaund an other to kil a man, and is not present when the other killeth him, he is taken to be but an Accessarie. But if he be present at the very time, he is then taken to be a principall murderer. 7. H. 4. 27. & 4. H. 7. 18.

And if hunters that haue agréed to kil such as shall resist them, do come into a parke, & one of them runneth vpon a man that rebuketh them, and killeth him, it is Murder in all the hunters that be in the parke, although some of them do not sée, and they all be principals, as Dalison reporteth.

So, if diuers come to do a Murder, & one of them only striketh & killeth the man, & the other be but present abbetting him & readie to aide him if nécde were, they be all taken to be principall Murderers at this day. For their presence is a terrour vnto the partie slaine, & they ioyne in stroke (as it were) with him that giueth the deadly wound. Pl. Com. F. 98.

If a man cōmaund one to poison an other, & he killeth him with a sword, yet the Commaunder

maũder is an Acceſſary to this Murder. Dal.

So if B. procureth one to kil A. in the field, and he killeth him in a Church: or to kil him ſuch a day, and he killeth him an other day, B. is Acceſſarie to the killing: but if after ſuch procurement, and before the execution thereof, B. groweth penitent, & chargeth him not to commit the fact, and he notwithſtanding performeth it, now B. is no Acceſſarie at all. Plowd. Com. 475.

And if B commaund one to beate an other, and he vpon that, beateth him ſo as he dieth of it, B. is Acceſſary to this Murder. 3. E. 3. Coro. Fitz. 314.

If B. commaundeth A. to robbe a Goldeſmith of his plate, as he rideth to *Sturbridge* faire, and he breaketh his houſe by night in *Cheapſide*, and robbeth him of his plate, B. is no Acceſſarie to this Burglarie. *ibidem.*

So is it, if B. cõmaund A. to burne ẏ houſe of C. & he burneth the houſe of D. thẽ is B. no Acceſſarie to ẏ burning. But if he had burned the houſe of C. & by that fire the houſe of D. had bene burned alſo, then were D. Acceſſary to that burning of the houſe of B. becauſe that burning followed of the fire which was kindled by his commaundement. *ibidem.*

To make receiuers, cõforters, & aiders of Felonies (after ẏ fact cõmitted) to be offenders

and Accessaries, it is requisite (sayeth M. Stam. F. 41.) that they haue knowledge of the felonie done, and it must be with an euill intent: for, if he aide him by his good word and sute for his deliuerance, or writeth in his behalfe for that purpose, he shall not be accompted an Accessarie. 26. Ass. pl. 47.

If a man doe giue a mortall wounde to an other vpon the first day of August, and a third person (knowing of the wounde) receiueth him two dayes together, and then he departeth, and after he that was hurt dieth vppon the tenth day of August, this Receipt maketh him no Accessarie: for, all the time of the Receipt, it was no felonie: But otherwise it is, if he had receiued him continually, till the death and after, Dalison.

If a man pursue and take a Felon which hath stolen his goods, and he taketh his goods from him, and then suffereth him to goe at large, this maketh him no Accessarie. But if he agree with him, and take money of him, to the ende that he shall not giue euidence against him, so that the other escapeth therby, then is he an Accessarie to that Felonie, by the opinion of Iustice Hales (M. 6. E. 6.) because it is a comforting of him.

A wife may be Accessarie to a felonie without hir husband, by receiuing Felons into the house,

house, the husband either not knowing of it, or wayuing the house so sone as he knoweth it. 15. E. 2. Cor. Fitz. 383. But the wife shal not be accompted Accessarie to the Felonie of hir husband, by comforting him, &c: neither is she bound to discouer him. Britton. Fo. 47.

But now to returne to Baylement. He which (within the yeare) is acquited of murder, or manslaughter, at the Queenes suite, must be remitted to prison, or let to Mainprise, vntill the end of the yeare, and the partie grieued maye in that meane time commence the Appeale, 3. H. 7. ca. 1.

Further, me thinketh that I may set down this as a rule (euen at the common lawe) concerning Bailementes. That the Iustices of the Peace cannot meddle with the Bailement of any prisoner, excepte he be prisoner for suche a cause, whereof the Iustices of Peace be competent Iudges. Whiche also was the cause, that one Iustice of the Peace could not by force of the Commission onely, haue bayled suspectes of Felonie, before that they were indited therof as I haue told you. For, out of their Sessions, and before inditement, they were no Iudges of suche a matter.

And on the other side, it seemeth that two Iustices of the Peace (the one of them beeing

of the *Quorum*) may out (of the Sessions) baile such as come into prison by the processe of the Sessions made vpon penal lawes, (not forbidding baile,) because two such Iustices be competent Iudges of al those matters, insomuch as they may heare & determine thē.

Sundrie doubts (I confesse) may be made cōcerning the businesse of Baile, which I am not able to dissolue, & therefore am not much willing to moue. Onely this I will say for all, that it becommeth Iustices of the Peace to be verie circumspect in graunting Bayle, both for feare of wrong by denying it to him that is repleuisable, and for feare of daunger to the seruice it selfe by giuing it where it is not grantable. And therfore I aduise them, to consider first, whether ỹ power of Baile (whē it is required) be not taken from thē by some of those former statuts: & then, whether that particular statute it self (against which ỹ prisoner is charged to offend) doe not specially prohibite the same: for you shall méete with many statutes, which do not only take baile frō the offenders thereof, vpon their solemne conuiction after Iudgement, but also vpon the Record of some one or two Iustices of the Peace, or by examination, or prowfe by witnesses or such other triall had before them.

For exāple, take a few of each kind, seeing it

it would proue troublesom to rehearse thē al.

1. He that is conuicted before the Iustices of the Peace, vpon the statute of Liueries, shall be committed to prison for one whole yeare without Baile or Mainprise. 8.H.6.c.4. Liueries.

2. He that is conuicted before thē, for abusing a licence of transporting victuall, shall likewise be committed by them, and shal remaine there a whole yeare without Baile or Mainprise. 1.& 2.Phil.& Mar.ca.5. Licence to transport.

3. He that is cōuicted before thē for offending ỹ statute made against forstalling, &c. shall be committed to the gaole for two moneths without Baile or Mainprise. 5.E.6.c.4. Forstalling.

4. And he that is conuicted before thē for offence against the statute of Musters, shalbe awarded to remaine in prison without Baile or Maineprise, till he haue payed the forfaiture, 4.& 5.Phil.& Mar.ca.3. Musters.

1. Againe, if any one Iustice of the Peace shal find, or know, any to haue exercised any vnlawful games, he may cōmit him without Baile or Mainprise, til he will become bound no more to vse vnlawfull games. 23.H.8.c.9. Games.

2. So, he that is conuicted before two Iustices of ỹ Peace to haue refused to serue for such wages as is by order appointed, shal remaine in prison wout Baile or Mainprise, til he wil be bōūd to serue accordingly. 5.El.c.4. Seruaunt.

Alehouse. 3. He that is committed by two Iustices of the Peace, for keeping a common Alehouse of his owne authoritie, shal remaine in prison three dayes, &c. without baile or mainprise. 6. E. 6. ca. 25.

Bastarde. 4. And the reputed father or mother of a Bastarde childe, that will not performe the order set down by two Iustices of the Peace thereto authorized, shall be committed, and shal remain in prison without baile or mainprise, till he or she will be bound, &c. 18. El. c. 3.

Now (for an ende of Bailement) I will shewe you one forme of a Baile, and an other of a Liberate.

The Baile. *Memorandum, quòd decimo die mensis Octobris, Anno regni &c. coram nobis* G.M. *&* W.L. *duobus Iusticiariorum &c. assignatorum, venerunt* A B. *&* C.D. *de* E. *in dicto commitatu* Yeomen, *& ceperunt in ballũ* F.G. *&c.* Laborer, *(captum, & detentũ in prisona, pro suspicione cuiusdam felonie, &c.) vsq; ad proximam generalem Gaolæ deliberationem in cõmitatu prædicto tenendam: Et assumpserunt super se, scilicet quilibet eorum sub pœna,* 20. *lb. de bonis et catallis, terris et tenementis eorũ et cuiuslibet eorum ad opus dictæ D. Reginæ leuandarum, si prædictus* F.G. *ad eandem proximam Gaolæ deliberationem*

tionem

tionem perſonaliter non comparebit coram Iuſticiarijs dictæ Dominæ Reginæ ad dictam Gaolam deliberandam aſſignatis, ad reſpondendum dictæ Dominæ Reginæ tunc & ibidem de et ſuper omnibus quæ illi obijcientur. Datum ſub ſigillis noſtris die et anno ſupradictis.

GEORGE M. and *W. L.* two of the Iuſti- The Liberate.
ces of &c. To the keeper of her Maieſties priſon in *Maydſtone*, &c. greeting: For aſmuch as *F.G.* &c. Labourer, hath before vs found ſufficient mainepriſe to appeare before the Iuſtices of Gaole deliuerie at the next generall Gaole deliuerie to be holden in the ſayde Countie, there to aunſwere to ſuch things as ſhal be then on the behalfe of our ſayd Soueraigne Lady obiected againſt him, and namely to the felonious taking of two ſheepe (for the ſuſpition whereof hee was taken, and committed to your ſayde Gaole) we commaund you on the behalf of our ſayd Soueraigne Lady, that (if the ſayde *F.G.* doe remayn in your ſayd Gaole for the ſayd cauſe, and for none other) then you forbeare to greeue or detayne him any longer, but that you deliuer him thence, and ſuffer him to go at large, and that vpon the paine that will fall thereon. Yeouen at *Ightham* aforeſayd, vnder our Seales, this tenth daye of October. &c.

The good Abearing.

The auctoritie of some two Iustices of the Peace goeth yet further: for, the common manner is, that two Iustices of the Peace (the one of them being of the *Quorum*) doe ioyne in graunting suertie for the good abearing: whereof I haue alreadie spoken my minde.

Alehouses.

Two Iustices of the peace also (the one being of the *Quorum*) may prohibite and remoue common Ale-selling, and may also allow the same, taking bonde with suertie by Recognusance for good rule to be kept in such Alehouse &c. by their discretion. And they maye also committe and imprison (for three dayes) those that keepe common Ale-selling of their owne heades, against prohibition, or without allowance thereof, and maye after take Recognusance of them with two suerties that they shall keepe none. 5. E. 6. cap. 25.

And here, seeing that the order of the conditions of these bondes is partlye referred to discretion, I will for (the better bridling of these nurseries of naughtinesse) leaue with you that forme of the firste of them, whiche I haue knowne practised by that Honourable Iusticer, the Lorde William Cobham, nowe Lorde Warden of the Fiue Portes.

THE

THE Condition of this Recognuſance is ſuch, that wheras the withinbounden *A. B.* is admitted and allowed by the withinnamed Lorde *Cobham*, and *William Lambarde* (two of the Queens Maieſties Iuſtices of the Peace within the Countie of *Kent* within written) to keepe a common Alehouſe or Tipling houſe, and to vſe common ſelling of Ale, or Beere, only within the now houſe of him the ſaid *A.B.* (and not elſewhere) ſcituate in the *High ſtreate* of the Town of *M.* within written, and called the ſigne of the Hart: If therefore, he the ſayd *A. B.* during ſuch time as he ſhall keepe ſuche common Alehouſe there, ſhall not ſuffer any vnlawfull play, at the Tables, Dice, Cardes, Tennis, Bowles, Cloſhe, Coytes, Loggets, or other vnlawfull Games to bee vſed in his ſayde houſe, or in his garden, orchard, or other his grounde, or place: Nor dreſſe, or cauſe, or ſuffer, to bee dreſſed, anye fleſhe to bee eaten vpon any daye forbidden by the Lawes or Statutes of this Realme of Englande: Nor wittinglye and willingly admit, or receiue, into his ſayd houſe, or anye parte thereof, any perſon notoriouſly defamed of or for theft, incontinencie, or drunkenneſſe, or that ſhall bee before hande notified to him the ſayd *A.B.* by the Conſtable

For, euery place is not meete.

or

or Borſholder of *M.* aforeſayd, for the time being, or by the Deputie of either of them, to be an vnmeete perſon to be receiued into a common Alehouſe: Nor keepe or lodge there any ſtraunge perſon (aboue the ſpace of one day and one nighte together) without notice thereof firſte giuen to the Conſtable or Borſholder, or the Deputie of the one of them, there And fynallye, if hee the ſayd *A.B.* during all the time that hee ſhall keepe common ſelling of Ale or Beere in the ſaid houſe, ſhal and will there vſe and maintaine good order and rule: That then this preſent Recognuſance &c. or elſe. &c.

Weightes and Meaſures.

Two Iuſtices of the Peace (ſo that the one be of the *Quorum*) maye (by examination, or Enquirie) heare and determine the faultes of heade Officers in Cities, Boroughs, and market Townes, that doe not twice yearely view and examine Weightes and Meaſures, and breake and burne the defective: as alſo the defaultes of buiers and ſellers by other weightes and Meaſures than they oughte to doe, and may breake and burne the defective weightes and meaſures, and amerce and fine the offendoures by their diſcretion, and make proceſſe againſt them, as if they were indited of Treſpaſſe againſt the Peace, 11. H. 7. cap. 4: & 12. H. 7. ca. 5.

Two

Two suche Iustices, maye giue licence to Fencers, Beareweards, Common players in Enterludes, Minstrels, Iuglers, Pedlers, Tinkers, and Petiechapmen, to go abroade, so as they shall not be taken as Roges, 14. Elizab. ca. 5. Pedlers, Tinkers, Fencers, Players, &c.

Sute may be commenced againste a high Constable in the name of two of the next Iustices of the Peace to the place (if it be out of Citie, Borough, and Towne Corporate,) for not suing a negligent Collector of the money for the poore within the time limitted by the Statute: and they shall euerye halfe yeare take the account of suche Collector, and may take order with the Surplusage of such collection, and may also commit him to prison, for refusing to accounte, or to bring in his surplusage contrary to the Statute 14. Elizab. cap. 5. Poore.

Two Iustices of the Peace (the one being of the *Quorum*) may imprison suche as do refuse to giue towardes the releife of the poore, or doe discourage others to giue. And the Bishop, or his Chauncelour, shall call the two Iustices of the Peace next inhabiting to any Hospital, to assist them in taking the account of such as haue had the collection of the reuenues and profites of such Hospitall, and they then may charge the accomptant (vnder penaltie Poore. Hospitall.

naltie to lose such summe of money as they shall thinke meete) to account, and not to delay it, and forthwith to employ the Surplusage to the vse of the Hospitall 14. Eliz. ca. 5.

Bastard childe

Two Iustices of Peace (the one being of the *Quorum*) in, or next to the limites where the parish church is, in which a Bastard child (left to the charge of the Parish) shalbe borne, ought to take order by their discretiõ, as well for the releefe of the Parishe, and keeping of the childe, as also for the punishmente of the mother, and reputed father therof 18. El. ca. 3.

Tithes.

Two Iustices of Peace (the one being of the *Quorum*) vpon complaynt by any competent Iudge of Tithes, for any misdemeanor of the defendant in a sute of Tithes, may cause him to be attached, or committed to warde, till he finde suertie vnto them by Recognusance to the Kinges vse, to obey the Procesle and Sentence of that Iudge, 27 H. 8. ca. 20.

And also vpon complaynt in writing by an Ecclesiasticall Iudge that hath giuen definitiue sentence in case of Tithes agaynste one (which wilfully refuseth to pay the Tithes, or summes of money so adiudged) two suche Iustices may cause the partie to be attached, and committed to the next Gaole, till he find such suertie as is aforesayd to performe that sentence 32. H. 8. ca. 7.

Two

Two Iustices of Peace, dwelling next any Citie or Towne, where anye Retaylour of woollen cloth shall present vnto them any defective cloth agaynst this Statute (beeing conferred with the Statute 4. & 5. Phil. & Mar. ca. 5) shall cause the same to be cut into three equall partes, whereof the one to bee to the Queene, the other to the Presentours, and the thirde to the Iustices themselues 5. Ed. 6. cap. 6. Cloth.

No Fisherman shall be taken to serue as a Mariner by the Queenes Commission, but by the choice of two Iustices of the Peace adioyning to the place where he is to be taken, 5 El. ca. 5. Fisherman.

Two Iustices of the Peace (not being of kinred, alliance, counsell, or fee, to the Lorde (or owner of a wood) appointed by the more part of 4 Iustices of Peace at their Sessions, vpon complaint of the Lord made vnto them may diuide and set out the fourth parte of it, if the Lorde and Commoners thereof (being first called before them) can not agree vpon it, 35. H. 8. ca. 17: & 13. El. ca. 25. Diuide the fourth part of a wood.

Two Iustices of the Peace, wherof the one to be of the *Quorum*, (appointed by the *Custos Rotulorum*, or by the Eldest of the *Quorum* in his absence) are to ouersee, & control, the Shiriffs bookes and amercements, and the estreits of Amercements in the County Court.

of the sayd amercementes are to be made by Indenture betweene them and the Shirif or Undershirife, and to be sealed with their seales: And they may vpon suggestion make proces as in an action of Trespasse against the offendors of the Statute to aunswere before them, 11. H.7.ca.15.

And here also, is place for those priuate Actes, wherein any power is giuen to two Iustices of the Peace, as:

Norwich. 5.E.6.ca.24. For the making of Couerlets & Dornikes, in *Norwiche.*

Wales. 35.H.8.ca.11. For wages of the Knightes of *Parliament.*

Northumberland. 11.H.7.ca.9. For recognusances to be taken of Lessees in *Northumberlande.*

Vniuersities. 2.& 3. Phil.& Mar.cap.15: & 13.Elizab.cap.21. For prohibition of purueiances, within fiue miles of either of the Vniuersities.

Kent, and Sussex. 14.H.8.ca.6: & 26. H.8.ca.7. For laying out newe high wayes in Kent and Sussex.

Cardiffe. 23.Eliz.ca.11. For the repairing of Cardiffe bridge.

The

VVhat thinges, three, or moe, *Iustices* of the Peace may doe, out of the *Sessions*.

CAP. XXIIII.

THe Auctoritie as well of any two Iustices of the Peace generally, as of some certayne two Iustices specially, being thus at some length vnfolded, it remaineth that (for an ende) we speake somewhat of three, and the greater number.

Three Iustices of the Peace (one of them being of the *Quorum*) may discharge oute of prison, any person committed thither for his offence in not declaring to a Iustice (within 24. houres) that he was moued to ioine in any vnlawful Assemblie contrary to the Statute, 1. Mar. 1. Parl. ca. 12: & 1. Eliz. ca. 17. Vnlawfull Assemblie.

It is requisite, that the Certificat (that is to be made to the heade Officer of a Citie or Towne Corporate, where a childe is to bee put Apprentise to a Marchaunte, Mercer, Draper, Goldsmith, Ironmonger, Imbroderer, or Clothier, that the father or mother of such Certifie for an Apprentise.

such childe may dispende fortie shillings freehold by yeare) be vnder the handes and seales of three Iustices of the Peace where the landes lie. 5. Eliz. ca. 4.

Roges. Three Iustices of the Peace (the one of the being of the *Quorum*) may with the Surplusage of the collections and forfaitures, by their discretions settle the Roges (borne, or abyding for the most part of three yeares, in that Shire) to worke, there to be holden to worke by ouerseers, 14. Eliz. ca. 5.

Money giuē to the poore, high wayes, or bridges. The Bishop and his Chauncelour, & three such Iustices of the Peace haue power to examine, how money or other reliefe (appointed by King Henry the eight, or any other, to the vse of the Poore, or of amending of Highwayes, or Bridges) is bestowed, and to cal to account the deteiners thereof, &c. 14. Eli. ca. 5.

Deprave the Sacrament of the Lords supper. It seemeth, that three such Iustices of the Peace may out of the Sessions take information and accusation by the oathes of two honest persons, against such as shal deprave the Sacrament of the body and blod of our Lord and Sauiour Iesus Christ, against the Statute: and examine them, what other witnesses were then by: and to bind them al by Recognusance, to giue in euidence at the day of triall, 1. E. 6. ca. 1. but enquire of this matter.

Foure Iustices. Foure Iustices of the Peace (whereof one to

to be of the *Quorum*) may (where a decayed Bridge is, and where it cannot be proued who, or what lands, be chargeable to the repayring thereof) take the inhabitants, make collectors, and appoint ouerseers, for the amendement of the same, &c. 22. H. 8. ca. 5. Bridges.

Sixe Iustices of the Peace, may in sundrie shires take order for common Gaoles, whereof the Shirife shal haue the custody, and to the which murderers & felons &c. shalbe sent: and may do and performe diuers incidents thereto by the Statuts. 23. H. 8. ca. 2. & 13. Eli. ca. 25. Six Iustices, Gaole.

Sixe Iustices of the Peace (two of them being of the *Quorum*) may for a whole yere after the expiration of any Commission of Sewers, execute the lawes of the Cõmissioners of Sewers, vnlesse that a new Commission of Sewers be published within the yere. 13. E. c. 9 Sewers.

To this Title also, do these particuler Statutes belong.

13. El. ca. 23: & 23. El. ca. 12. For pauing the streete by *Alegate*. Algate.

34. H. 8. ca. For establishing *Iustices* of the Peace in Wales. &c. Wales.

27. H. 8. c. 5. For *Iustices* of the peace in *Cheshire*. &c. Cheshire.

23. H. 8. ca. 2: & 5. Eliz. ca. 24: & 13. Eliz. cap. 25. For the appointing & building of Gaoles, in sundry shires. Gaoles.

18. El. ca. 20. For amending of Bridges within fiue miles of *Oxford*. Oxford.

18. Eliz. ca. 10, For the reparation of the ferry called the Kings ferrie in the Isle of Shepey in *Kent*. Shepey.

Of the rewarde, and punishment, of *Iusticees* of the Peace, for thinges done, not done, or misdone, out of the Sessions of the Peace.

CAP. XXV.

OF Rewarde and Punishmente (as sayde Solon) all Common weales do consist: for as the care of equitie and Iustice wareth colde, vnlesse there be reward ready for vertue: So the negligence of euill men muste nedes be corrected by seueritie and chastisement of pains. And therefore, albeit the meaning of our Parliamentes, hath alwayes bene, that choise should be made of such persons for this Office of the Peace, as neded no reward for their trauaile in that behalfe: yet to the end that they should with the more alacritie and cheerefulnesse proceede in their affaires, they doe now and then cast them a trifle, rather to let them know that they doe

Rewarde.

behold their wel doing, than that they ſtande in neede of any recompence.

Herevpon euery Iuſtice of Peace, ſitting in execution of the Statute of Laborers and Seruauntes, ſhall haue fiue ſhillings the day (for three days togither) out of the forfeitures that growe by the ſame Statute 5. Eliz. ca. 4. Seruauntes.

And if any Perſon (commaunded by two Iuſtices of Peace, to appeare to be made an ouerſeer to ſee the Statute of Cloth making kept) doe (without reaſonable excuſe) refuſe to come and to take vpon him that office, hee is to forfeite for euery ſuch refuſal fortie ſhillings: and thereof thoſe Iuſtices are appointed to haue the one halfe by the Statute, 3. E. 6. ca. 2. Ouerſeers. Cloth.

Thoſe two Iuſtices of Peace alſo next adioyning, to whom any Cloth (faultie againſt the Statutes) ſhall be preſented, may cut the ſame into three equall peeces, and ſhall haue to themſelues the one of the ſame, by the Acte 5. E. 6. ca. 6: & 4. & 5. Phil. & Mar. ca. 5. Faulty Cloth.

And euery Iuſtice of the Peace is allowed to retayne to his owne vſe, the one moitie of all ſtraungers goods, calling themſelues Egyptians, that he ſhall lawfully ſeiſe, by vertue of the Statute, 22. H. 8. ca. 10. Egiptians.

The Iuſtice, or Iuſtices of the Peace, that doe ioyne with the Clerke of the Peace, in Inrolmente of bargayne and ſale.

taking the Conuſance of an Indenture of bargaine & ſale of land to be Inrolled, ſhall haue xy.d. therefore if the land excéde not in value xl.ℓ. by the yeare, and y.ℓ.vj.d. if it doe excéde that value, by the Statute 27.H.8.c.16.

Riot. The Queenes highneſſe ſhall beare the coſtes that the Iuſtices of Peace ſhall ſuſtain in the execution of the Statute 13.H.4.cap.7. of Riots, &c. 2.H.5.ca.8.

Forcible Entrie. And ỹ Iuſtices of the Peace ſhall make executiõ of ỹ Statute of forcible Entries at the coſts & charges of the party gréeued. 8.H.6.c.9

Alehouſe. Twelue pence is giuen to the two Iuſtices of Peace for taking euery Recognuſance of him that is alowed to kéepe a common Alehouſe, by the Statute 5.E.6.cap.25.

Puniſhment. On the other ſide alſo, the Statutes doe now and then correct the dulneſſe of theſe Iuſtices, with ſome ſtrokes of the rodde, or ſpurre. And therefore, euen at the firſt it was ordained, that if the Wardeins of the Peace did not loke vnto the execution of the Statute againſt ſuch as ſhould ride or go armed in any place, putting the Countrey in feare, then the Iuſtices aſſigned by the King, ſhould enquire of their defaulte, and puniſhe them, Stat. North. 2.E.3.cap.3.

Ride armed.

Riots. And the Statute of Riots &c. (13.H.4.c.7.) layeth C.li. forfeiture vpon thoſe Iuſtices of Peace

Peace that shal dwel nigheſt to the Riot &c. if they doe not put that Statute in execution.

And those Iustices of the Peace, and Shirife, or Vndershirife, which in sending their Certificat to the Queene and her Counsell, (concerning such a Riot) doe not withall Certifie the names of the mainteinors & imbracors in that behalf, with their misdemeanors that they know, shal euery of them forfaite twenty pounds, vnlesse they haue reasonable excuse for not certifying the same. 19.H.7.ca.13. Certificat.

That Iustice of the Peace which seiseth the goods of any Egyptians, and doth not incontinently restore such part thereof as shall bee proued before him, to haue ben craftily or feloniously taken, shal forfait the double thereof to such prouer. 22.H.8.ca.10. Egyptians.

That Iustice of Peace which doth not (after request therof made) giue attendance vpon the Queenes Lieuetenant of the Shire, for the suppression of any Rebellion, or vnlawfull assemblie, shall suffer a yeares imprisonment, vnlesse there be cause of reasonable excuse. 1.Mar.Parl.1.cap.12: & 1.Eli.ca.17. Rebellious assemblie.

If any Iustice of Peace shall be proued to be in default about the execution of the Act of the Powre, by two sufficient witnesses before the Iustices of Assise, at their nexte generall Gaole deliuerie, he shall lose v. li. 14.El.ca.5. Poore.

Gunnes and Crosbowes.

That nert Iustice of Peace whiche faileth in presenting the name of him that presēteth it to him, according to the Statute of shooting in Crosslebowes, or Gunnes, shall forfeite xx. shillings, 2. E. 6. ca. 14. But enquire of the continuance of this, as before in the 21. Chapter.

Agnus Dei.

That Iustice of Peace, whiche doeth not (within foureteene dayes, after matter vttered to him concerning any *Agnus Dei*, &c.) signifie the same to some one of the Queenes priuie Counsell, shall incurre the paynes of the Acte, 16. R. 2. of *Premunire*: 13. Eli. cap. 2.

Certifie into the Escheaquer.

That Iustice of the Peace, which (hauing taken any examination concerning Plaintes in the Shirifes Courte) doeth not Certifie the same into the Escheaquer within one quarter of a yeare after, shal lose forty shillinges for his default, 11. H. 7. ca. 15.

Baile and certifie.

Those Iustices of the Peace, whiche doe graunt any Baile contrary to the Law, or do not certifie the Baile and examination of the Felonie according to these Statutes, shal pay such Fine, as the Iustice of Gaole deliuerie shall think méete 1. & 2. Phil. & Mar. ca. 13: & 2. & 3. Phil. & Mar. cap. 10.

Phisition.

Euery Iustice of Peace, that (dwelling within 7. miles of *London*) doth not (vpon request) assist the Colledge of Phisitions of *London* in the executiō of the Statute 32. H. 8. c. 8.

shall

shall bée punished, as one that runneth in contempt of the Queene, 1. Mar. ca. 9.

And how that Iustice of the Peace shall be punished, that shal take vpon him the office, not hauing twenty pounds in landes, it hath appeared alreadie, ca. 6. Not xx. pounds in lands.

THE EPILOGVE.

THVS muche (so shortly as I coulde) I thought fit to say, concerning the auctoritie of Iustices of the Peace, without the Sessions: wherin I haue rather sought to admonish them (by a sleight view and reherſall, of the most parte) what thinges they haue to handle, than laboured to accomplishe them (with full skill) how to administer, and execute them all. The Epilogue.

Neither doth that skil and knowledge lie in my power, but in their owne diligence, and must therefore be won by a continual studie and painefull meditation of the Statutes at large: towardes their helpe and furtherance wherein, I haue entreated a godlie and learned Gentleman (M. Iohn Tindall, a friende, and fellow of mine in *Lincolnes Inne*) to take the paynes to cull out all those Statutes by themselues, which are nowe in force, and wherewithall Iustices of the Peace haue to deale: not altogither beheading them of their

preambles: Nor any whit curtayling them of their words: Nor otherwise dismembring them, or scattering their partes in sunder: But laying forth the bodies of them whole, and at large vnder their proper Titles, together with the materiall partes of their preambles, and not without any of their prouisoes: Therewithal amending the corruptions of the Englishe translation out of the Latine and Frenche: and finally adding vnto them (where neede shall be) some notes of helpeful direction, which things no man (that I know) hath hitherto assayed. And this shal shortly (I trust) come to lighte, either in a seuerall Volume by it selfe, or so marked in Mast. Rastals Abridgement, as euery man that will may easilye finde much good by it.

The

THE SECONDE BOOKE, INTREATING of the *Sessions* of the Peace, and of things incident therevnto.

THE PROHEME.

IT may peraduẽture seeme, that hauing alreadye stode long in matters that were of the lesse importance, and such as might bee dispatched at home *sine strepitu*, I will be now both long and tedious, when I begynne with those of greater weight, and which doe require the solemne Benche.

But, as at the firste I thought it meete to helpe most, where most nede was, I meane, where one or two Iustices (prested with the necessitie of time, and destitute of the assistaunce of their learned companions) were

were to administer their office alone: So nowe, knowing that at the *Sessions* of the Peace there be commonly many Iustices in number, and amongst them sundrie so well instructed in lawe, as in being too busie with that which belongeth thereto, I shall as the saying is, but sette a Candle in the Sunneshine and rather bewray want in my selfe, than bring helpe or light vnto them, I purpose to runne ouer this residue more swiftly, except it be in a few places, where eyther the profite, or necessitie, (or both) of the matters themselues shall beg licence, and procure pardon for me.

The

The description of the *Sessions* of the Peace.

CAP. I.

AS a man that hath receaued hurt in his bodie by a stroke, wherof he bleedeth freshelye, will be contented for the presente to admitte the helpe of any meane Leche, or Surgeon (comming next to hande) for the staunching of his blood, & binding vp of the wound, and yet would more gladlye haue vsed the conference of diuerse expert Surgeons for doing the same, if the danger of the hurt would haue graunted the time that will be losse in calling them togither: So also the common councell of this Realme, finding that the bodie thereof may be deepely wounded in some one member, and perceiuing that some euils must be resisted at the very first, (leaste otherwise they grow past helpe, and ware incurable) hath many times thought it good to committe to one, or to a fewe Iustices of the Peace (for that they be readie, and at hande)

hande) the ſtopping of the blood (as it were) and firſt dreſſing of the wounde, by repreſſing of force, and other outrages, that doe ſodainlie ariſe: and hath yet neuertheleſſe (when as the time and matter will permit) politikely eſtabliſhed an aſſemblie, and conference of all the Iuſtices at certaine tymes in a full court, and open Seſsion.

For it is true, that if the publique Peace ſhould not be preſerued by taking of Suertie, before it be broken: If ſuche as doe violate the commune tranquilitie ſhoulde not bee committed to priſon, when they haue broken it: If ſeditious talebearers (the ſowers of Rebellion) ſhoulde not bee ſnapte vp and reſtreyned: If finallye riotous aſſemblies ſhould not be diſperſed, and forcible inuaſions withſtoode and remoued, the hurt body would bleede to death, and too late (and all in vayne) woulde it bee to ſummon a Seſsion for remedie. But whē the bridle is once caſt vpon the head of the Offender, then, and not before, is the matter ready for the Sitter.

And great and many are the profits, that would enſue of theſe Sittinges, if they were more often kept, and duely gouerned.

The deſcription of a *Seſsion* of the Peace.

I will (for this time) call *a Seſsion of the Peace* An aſſemblie, of any two (or moe) Iuſtices of the Peace (one of them being of the *Quorum*)

Quorum) at a certain day (and place within the limits of their Commission) appointed, to enquire by a Iurie (or otherwise to take knowledge) and thereupon to proceede to heare and determine according to their power, of causes within their Commission, and the Statutes referred to their charge.

And this description excludeth al meetings, that are only for Enquirie, in somuch as to enquire and not to heare and determine, is but a halfe doing, and not worthy the name of a Session of the Peace.

It shutteth out also such assemblies as do consist of two Iustices of the peace, meeting only to enquire, heare, and determine of a Riot, by vertue of the Statute 13.H.4. for that may thei do (as also ỹ former) though neither of them be of the *Quorum*. So that it is but a particular seruice, layd vpon two Iustices & the Shirife by this Statute, and the Recorde thereof shall not (as I thinke and haue sayd already) remain amongst the Records of the Sessions of the Peace.

And therfore, the assēblie that I meane, is a meeting of such Iustices for the execution of their general authoritie. And albeit that happily some one matter bee the motiue & cheefe cause of their comming togither, yet if they deale with that and others (within their Commis-

Commission and charge) lette it (on Gods name) passe for a Session of the Peace, according to my meaning.

These Sessions of the Peace then, be grounded, chéefely vpon the words of the third *Assignauimus* in the Commission: the whiche (being, *duos vestrum, &c. vnum aliquem, &c.*) do very necessarily require the presence of one of the *Quorum*: for the wordes of the seconde *Assignauimus*, doe giue no power to heare and determine, but onely to make enquirie. And these three thinges, namelye, to Enquire, Heare, and Determine, doe (in effecte) comprehende whatsoeuer belongeth to the Sessions: So that euerye thing whereof I shall hereafter intreate, will concearne, either the Information of the Iustices, by enquirie, and other méete meane: Or the Hearing and triall of the cause it selfe: Or the Iudgement and execution (which is the Determining) giuen and done vpon it. And therefore, in this path (God willing) will I treade, and by it you shall trace me to the ende.

A partition of that which followeth in this booke.

(:)

VVho

VVho shall appoint the *Sessions* of the Peace: and how: and where.

CAP. II.

THE Iustices of the Peace, doe (at their *Sessions*) take knowe- ledge of causes within their Iurisdiction, either by the Oath of Inquirors, or by the presentmēt or declaration of other men: And this Inquirie is first prepared, by the apparance of the Officers and Countrie, and by the Articles giuē in charge: and then performed, by the presentment (or Inditement) of them that had the charge to make it.

Knowledge of causes at the Sessions.

Now, albeit that these Sessions be cōmonly, and most orderlye, summoned by a Precept in writing, yet is it not altogither of necessitie (for the making of a lawfull Session) to haue it so. For, if competent Iustices of the Peace do get men to serue, and thereupon do holde a Session (without anye Precept before directed) al presentments made before them by twelue lawful men, shal be of force in law: but no man shall lose anye

thing for his default of appearance there bicause no mã had notice of their Sitting. Mar.

Neuertheleſſe, bicause the maner is, to cal the Officers and Countie togither for thys ſeruice, by a Precept to the Shirife, wherein both the diſpoſition of the Iuſtices is notified for the holding of a Seſsion, & the ſeruice and attendance of thoſe others is commaunded to bee therat with them (which alſo they bee well warranted to directe vnto him, by the late *Aſsignauimus* of their Commiſsion, and by the *Mandauimus* that followeth ther vpon) I will lay down the Forme therof, which hath bene like to this:

Precept to ſummon the *Seſsions.*

THomas Randolph, & Thomas Wotton, *duo Iuſticiariorum Do. Reg. ad pacem in Cõmitatu Kancia conſeruandam, necnon ad diuerſa, felonias, tranſgreſsiones, & alia malefacta in dicto Commitatu perpetrata, audianda & terminanda aſsignatorum, Vicecomiti eiuſdem Commitatus, Salutem: Ex parte dicta Dom. Reg: tibi præcipimus, quod non omittas propter aliquam libertatem in Balliua tua, quin eam ingrediaris & venire facias coram nobis, vel ſocijs noſtris Iuſticiarijs pacis &c. (tali die &c.) proximè futuro apud* Maidſtone *in Cõmitatu prædicto. 24. liberos & legales homines de quolibet hundredo in Balliua tua, tam infra libertates quàm extra, ad faciendum & exequendum tunc & ibidem ea quæ ex*

ex parte dicta Dom. Reg: eis iniungentur: Scire facias etiã omnib⁹ Coronatorib⁹ Commitatus tui, Seneschallis, Constabularijs, Subconstabularijs, et Balliuis, infra Hundreda prædicta, quod sint tunc ibi ad faciendum & perimplẽdum ea quæ ex parte dicta Dominæ Reginæ eis tunc & ibidem similiter præcipientur: Et tu ipse tunc sis ibidem, ad faciendum & exercendum ea quæ ad officium tuum pertinent, & habeas ibi tunc nomina Iuratorum, Coronatorum, Seneschallorum, Constabulariorum, & Balliuorum prædictorum, & hoc præceptum. Dat. sub sigillis nostris apud Boughton Malherbe *in commitatu prædicto. 16. die Octobris, Anno regni dictæ Dominæ nostræ Reginæ Eliz. dei gratia &c. 23.*

This Precept may be made by anye two Iustices of the Peace, so that the one of them be of the *Quorum*: for two such may holde a Session of the Peace, as it doth plainelie appeare by the Commission, and therefore (as M. Mar. saith) it sufficeth not to haue it run vnder the name of the *Custos Rotulorũ* alone, seeing that he hath no more auctority in this behalfe, than one of his fellowes hath: for the words of the said *Mandamus* in ỹ Cõmission to the Shirife be, *Coram vobis, seu aliquibus vestrum: venire faciat, tot, & tales, &c.* Yea, if two suche Iustices make a Precepte for a Session of the Peace, all their fellowe

Iustices cannot discharge it by their *Supersedeas*: but a *Supersedeas* out of the Chauncerie wil discharge it, saith Fitz.

And if one Iustice of the Peace alone wil take vpon him to hold a Sessions of ỳ Peace, that was lawfullye summoned by him and an other such Iustice and wil make the Stile of the Sessions in the names of himselfe and the other, all presentments so taken before him may be auoided: But if the Sessions be in trueth holden by two sufficient Iustices only, and the Stile (or Title) thereof be made in the names of thre, then all the presentments before them shal stande good. For it wil not helpe the partie to saye, that one of the three was not there, when it shall appeare that two of them (the one being of the *Quorum*) were presente, which wil suffise. Mar.

The time. Touching the time of holding the Sessions of the Peace, I will forbeare to speake, til I shal come to diuide the Sessions.

The place. But the place of holding them is arbitrable, at the pleasure of the Iustices themselues, so that it be meete for accesse. And although the Precept do appoint the Sessions to be holden in some one town by name, yet may the Iustices keepe it in any other town, & al the presentments shal be good that shall be

be taken where they holde it: But then againe, no amerciament, can be set vpon any man for his default of apparance there, bicause he had no warning of it, Mar.

So if two Iustices make a Precepte for a Sessions to bée holden in one Towne, and two other Iustices make an other Precepte for an other Sessions to be holden at an other Towne (or in an other parte of the same Towne) the same daye: then the presentmentes taken before either of them shall be good. Marr. And then also it séemeth, that hée whiche serueth at the one Sessions (as a Juror, or Officer) shal be excused for his default at the other, bycause they bée both the Queenes Courtes, and of equal auctoritie.

V.iij. VVhat

VVhat persons oughte to appeare at these *Sessions*, and therein of the *Custos Rotulorum*, the *Records* of the *Sessions*, and the *Clerke* of the Peace, and how the *Iurors* ought to be qualified and ordred.

CAP. LII.

FOr the better preparation towardes this Enquirie, let vs pervse the persons, that are to attende and doe seruice at the Sessions.

The Iustices.

The Iustices of the Peace bee so necessarie, as without them (though all others should appeare) no Session can be kept: and yet if any of them be absent, their fellow Iustices cānot amerce thē, as the Iustices of Assise may do for their absence at the Gaole deliuerie: for, *Inter pares nō est potestas*, and the auctoritie of all the Iusti-

ces

ces of the Peace at the Sessions is equall, so that like power hath he which is not of the *Quorum*, with him that is, excepte it bée in speciall cases set forth in the Commission and Statutes. And therefore, it was holden (3. H. 7. Fitz. *Tit. Iustice del Peace.* 3.) that if one which is not of the *Quorum*, wil be so bolde as to rebuke one that is of the *Quorum*, hée and his companions may not commit hym to prison for it.

The Recognusors that stand bound to the kéeping of the Peace, and to appeare at the Sessions, and such like, be commonly tyed to the Quarter Sessions, wherevnto I am not yet come: And those prisoners that are sente by Iustices of the Peace for felonie or manslaughter, or suspition thereof, or be lette to Baile or Mainprise vpon any such offence, be reserued til the Gaole deliuerie, wherewith I haue not to doe: The rest of that kind, and the Rogues &c. may be brought forth at euerie Sessions of the Peace. The Recognusors.

But two sortes of men there are, that owe their Ordinarie attendaunce at these Sessions, that is to saye, the Officers (or Ministers) of the Courte, and the Iurours of the Countrie. The Prisoners.

Amongst the Officers, the *Custos Rotulorum* hath worthilie the firste place, bothe The *Custos Rotulorum*.

for that he is alwayes a Iustice of the *Quorum* in the Commission, and amongst them of the *Quorum*, a man (for the most parte) especiallye piked out for wisedome, countenaunce, and credite: And yet in this behalfe he beareth the person of an Officer, & oughte to attende: for the wordes in the Commission bee to him by name, *Quod ad dies & loca predicta, brevia, precepta, processus, & indictamenta predicta coram vobis & dictis socijs vestris venire faciatis.*

Who shal kepe the *Commission* of the Peace.

And (as his verie name sheweth) he hath the custodie of the Rolles, (or Recordes) of the Sessions of the Peace: and whether the custodie of the Commission of the Peace it self do perteine to him alone, it hath bene made some question: For Maister Marrowe sayeth, that seeing the other Iustices maye holde a Session with him, it is meete they shoulde then haue the Commission with them. But Chocke in the Booke (9.E.4.2.) holdeth that a Iustice of the Peace (in making any Iustification by vertue of hys Office) needeth not to shew the Commission of the Peace: because (saieth he) the keeping thereof belongeth to the *Custos Rotulorum*: and for the same cause also, the Bailie of a Iustice of the Peace shall not bee driuen to shewe the Commission as it seemeth 20. H.7.

H.7.7. And truely, since it is suche an other thing, as can remaine but in the handes of one at once, it seemeth most reasonable, that hée whych is put in truste with the reste of the Recordes, should bée credited with the custodie of the Commission also.

But vnder the name of the Recordes of the Sessions of the Peace, I do not comprehende all manner of Recordes concerning the Peace, but those onely whyche ought to bée at the Sessions of the Peace, as Billes, Plaints, Informations, Inditements, Presentmentes, the Rolles of Processes, Trialles, Iudgements and Executions, and all other the Actes of the Sessions of the Peace themselues: And furthermore, the Proclamations for the Rates of Seruants wages, all Recognusances of the Peace, & good Abearing, Recognusaunces concerning Felonies, and Alehouse kéepers, and suche like as ought to bée certified (or brought) to the Sessions of the Peace, must be numbred amongest the Recordes of the Sessions of the Peace: For of all these there may bée vse at the Sessions, and therefore the *Custos Rotulorum*, or some for him, ought to bée readie to shewe them. And althoughe it were before time at the liberty of a Iustice of the Peace, to certifie a Recognusance of the Peace to

The Records of the Peace.

the *Custos Rotulorum*, (as you may see 2.H.7. 1.) Yet now, by the Statute (3.H.7.cap.1.) he ought to certifie, send, or bring it to the next Sessions of the Peace, that the partie may bee called, and to the end also, that hys default (if he make any) may bee recorded: and by such record of his default, he is concluded to saye, that hee appeared there, 13.E.4.

As for Precepts for Suertie of the Peace, speciall Records for conuictions of forcible Entries, Riots, & such like, as bee made oute of the Sessions of ỹ Peace by particular Iustices, and bee to remaine with themselues, and not appointed to be certified thither, I can not recken them in the number of the Recordes of the Sessions of the Peace: no more than I can well doe the Inrolments of bargaines and sales, and such other Records lying in the charge of the *Custos Rotulorum*, or Clearke of the Peace.

But M. Brooke (Tit. Commission. 21) addeth, that the Recordes of the Iustices of the Gaole deliuerie, doe remaine amongest the Records of the Peace also. Howbeit I thinke hee meant it not of all the Recordes of the Gaole deliuerie. For, as the Iustices of Gaole deliuerie, haue their proper Clark, which maketh vp, and keepeth the Recordes

of

of things determined by that Commission: so the same Iustices (beeing wythall Iustices of Peace) do leaue with the Clearke of the Peace, Inditements, and such causes of the Peace, as be not determined, but do hang in Processe, to the ende that offendors may be the more spedily Iusticed.

And it appeareth 13.H.4.10. that Hanford Iustice of Gaole deliuerie, at hys depature called the Clearke of the Peace, and willed him to take the name of a prisoner that had beene sent thither for Felonie, wythout any sufficient proofe, and to cause it to bee inquired of at the next Sessions of the Peace.

The Office of the *Custos Rotulorum* was of auntient time giuen by the discretion of the Lord Chauncelour, vntill that (aboute the latter end of the raigne of King Henrie the eight) sundry persons (no lesse vnworthy to occupie the Office, than gredie to haue the place) didde by their owne labour and other mens friendship obtaine at that kings handes, grauntes of the same by hys Letters Patents, for tearme of their liues: by meanes whereof, so many euilles didde shortly ensue, both to the hinderaunce of Iustice and to the disherison of the Kings subiects, that the last Parliament of his raigne, *viz.* 37.H.8.cap.1. did somewhat restraine that

The gift of the Office of the *Custos Rotulorum.*

that course: for as it did ordaine, that none shoulde thenceforth bee appoynted *Custos Rotulorum* in anye Shire (a fewe places of Priuiledge onely excepted) without a Bill signed with the Kings hande: **So it toke order also,** that the same Bill assigned shoulde bee but as a Warrant to the Lorde Chauncelour, to assigne (in the Commissions of the Peace) the same person to the *Custos Rotulorum*, onely vntill the King should (by an other Bill, signed with his hande) make appointmēt of an other for the same Office. **But neyther this ordinaunce had any long life: for within a fewe yeares after, it was thought so preiudiciall to the power of the Lorde Chauncelour, and so troublesome a matter to sue to the** King, **for** Billes **so signed, that by the Parliament** (3.Ed.6. cap.1.) the Lord Chauncelour was wholly restored to his antient auctoritie in naming the *Custos Rotulorum* againe (excepte in suche priuiledged places) wythout expecting any such Bill: and that the *Custos* appointed by the discreation of the Lorde Chauncelour, shoulde enioy the same Office, to bee occupied by himselfe, or his sufficient Deputie, in as ample maner, as if that Statute (37.H.8.cap.1) hadde neuer bene made.

The

The Clearke of the Peace oweth hys attendance at these Sessions also: for hée readeth the Inditements, & serueth the Courte: he enrolleth the Actes of the Sessions, and draweth the Processe. He also must deliuer Letters to suche as be acquitted of Felonie, and will begge for their fées 22.H.8.cap.12. He must record the burning of Roages thorow the eares: 18.Eliz.ca.3. And must likewise record the Proclamations of Rates for seruantes wages, & inroll the discharge of Apprentices, 5.Eliz.cap.4. He is appointed to kéepe the counterpane of the Indenture of Armour, 4. & 5.Phil. & Mar.cap.2. He kéepeth the Register Booke of Licences giuen to Badgers and Laders of corne, 5.Eli. cap.12: and of those that are licenced to shoote in Gunnes, 2.E.6.ca.14. And he is boũd (vnder the paine of xl.shillings) to certifie into the Kings Bench, trãscripts of Inditemẽts, Utlawries, Attainders, and Conuictions, had before the Iustices of the Peace within ỹ time limited by the Statute 34.H.8.ca.14. Clearke of the Peace.

All whiche things he cannot doe, if he bée not present: so that he is an Officer to this Court, and is the Clearke of the Iustices, as the Statute 12.R.2.ca.10 nameth him, & not (as M Marrow thought) the Clearke of the *Custos Rotulorum* onelie. You maye reade also

also (2.H.7.1.) that if a Recognusance of the Peace bee brought in to the *Custos Rotulorum*, and the partie grieued will not sue forward, then the Clearke of the Peace (who is the Clearke and Attorney of the King, saith that Booke) shall call vppon it for the Kings aduantage: and I am sure, that the said Statute (37.H.8.ca.1.) calleth his place an Office.

The nomination of the Clearke of the Peace.

Howbeit the nomination and appointment of him hath long time belõged to the *Custos Rotulorum*, and he is to enioy his Office so long as the *Custos Rotulorum* keepeth his place, and may exercise it by himselfe, or by a Deputie sufficiently instructed in the Law, and admitted by the *Custos Rotulorum*. And this Office was also (for a time) gyuen by the Kings Letters Patentes for terme of life, as that of the *Custos Rotulorum* was, vntill the saide Statute (37.H.8.ca.1.) recontinued the auntient order of giuing it to the *Custos Rotulorum* onely.

The Coroners.

Furthermore, the Coroners, as the common forme of the Precept sheweth, and the Statute (27.H.8.cap.5.) presumeth, ought to bee present at the Sessions: But yet that is not, for to certifie their Inquisitours, for that ought (by 1.& 2.Phil.& Mar.cap.12.) to be done at the generall Gaole deliuery: nor yet

yet to receiue any Approuour, for neither that belongeth to the Iustices of Peace 9.H. 4.1. but it is onely (saith M. Marr.) because the Coroners bee parties to the Exigents, and bée Iudges of the Vtlawries: Howbeit, they are (besides that) Conseruators of the Peace, and maye (in cases) committe men to prison, and therefore oughte to bée at the Sessions, to obiect against them.

The Shirife also, oughte to attende at these Sessions, for the double duetie that hée beareth: the one, as Shirife to retourne the Precept, to take the charge of prysoners, and to serue the Courte otherwise: as hée hath in charge by the *Mandauimus* that is mentioned in the Commission to haue bin sente vnto him: the other, because he also hath Care of the Peace. The Shirife.

The Bailifes of Franchises, and the Constables of Hundreds, are to serue also, the one as Ministers, and the other as Iurours, and therefore oughte to giue their attendance. Bailifes and Constables.

And euerie of these (excepte it bée the *Custos Rotulorum*, for thereof I doubte) may without controuersie bée amerced, if they make default. But the Ordinarie oweth not his attendance at any Sessions of the Peace as he doth at euerie Gaole Deliuerie, The Ordinarie.

uerie, in the opinion of M Marr. Indéede hée is not warned by the commune Precepte, and therefore can not so conueniently take knowledge of the Sessions of the Peace. Howbeit, if he come, I thinke that he oughte to serue, when he shall bée called.

Iurours for Inquirie & triall.

But especially, there oughte to appeare such Iurours, as bée returned by the Shirife, and warned by his Bailiffes, whether it bée for Enquirie, or triall. And in this behalfe, both the Commission, the commune forme of the Precept, and the Lawe it selfe (11.H.4.cap.9.) willeth, that they shoulde bée, *probi & legales homines*: for if any of thē, bée discredited in Lawe, as by Attainder in Conspiracie, Attaint, *decies tantum*, Subornation of Periurie, or suche like, they be not *Probi*, and their presentment is voide by it, vnlesse there be twelue (besides them) that are not so blemished.

Againe, if they bée outlawed, abiured, condemned in a Premunire, or attainted of treason, felonie, or suche like, then be they not *Legales*, and their presentment is merely voide also, as it may bée gathered vppon the case 11.H.4.41.

And women, infantes vnder fourteens yeres of age, Aliens, and such as bée within

orders

ꝺꝛꝺers of the Miniſterie ꝺꝛ Cleargie, cannot be empanelled amongſt others.

And generallie theſe Iurours ought alſo, either to be inhabiting within the Shire, ꝺꝛ elſe to haue lands there: foꝛ the Commiſſion willeth, that they ſhoulde be ſuche, *Per quos rei veritas melius ſciri poterit*, whyche muſte néedes be vnderſtoꝺe of ſuch as haue cauſe to knowe the Countrie. And the pꝛecept is vſually accoꝛding to the ſame foꝛme. But ſpeciallie (in the Countie Palatine of *Lancaſter*) each of them ought to haue to the yerely value of fiue pounds, by the Statute 33.H.6.cap.2.

If anye of the Iurours returned, be thꝛée ſcoꝛe and tenne yeares of age, ꝺꝛ haue anye continuall infirmitie, ꝺꝛ be otherwiſe decrepite, yet that ſhall not excuſe him foꝛ not appearing, if the Iuſtices will require his ſeruice, but he is ꝺꝛiuen to his Action againſte the Shirife foꝛ retourning of hym, vpon the Statute of W.2.ca.38.Marr.

And if he haue a Charter of Exemption, he ought to ſhewe it to the Shirife, againſte whome (if he will notwithſtanding empanell him) he may haue his Action vpon the Caſe, and hath none other remedie by 18.H. 8.5. *Cur* which may be truely ſaide, as to the ſauing of his iſſues: but by ſome other bookes

and namely 42.Ass.Pl.5 & Marr.)he is to bée discharged vpon his apparance, & specially where he hath in his Charter of Exemptiõ these wordes, *Licet tangat nos*, vnlesse there want others that be sufficient to serue.

Now,though some of the Iurours of this Enquirie be of affinitie(or consanguinitie) with any partie grieued, that procureth the inditemẽt, yet that hindereth not their presentment: howbeit it is no discreation for the Iustices to suffer any suche to bée empanelled amongst them.

General and particular Iuries.

Our common manner in *Kent* (agréeing with the forme of the Precept) is to return particular Iuries for the Hundreds, and one generall Iurie for the bodie of the Shire: this lasse is made vppe with vs, (for the moste parte) of the Conestables onlie:and those others(if they be not filled at the first) are wonte to bée renewed wyth the Tales from Sessions to Sessions. But that vsage is no small hindraunce to the seruice (as manye doe thinke) by reason that (those particular Iuries béeing seldome serued with full apparance) the whole Enquirie standeth only vpõ their labour that are empanelled for the bodie of the Shire, that is to say, vpon one man of each Hundred, or two (at the moste) who cannot be thought to sée so

so muche as a whole Iurie maye and doeth. And therefore, they thinke, that it were good to make vppe some of the particular Iuries also, (when they be not full) *de circumstantibus*, of other Hundreds, by whiche meane, either the whole Shire, or (at the leaste) a great many parts therof, might be perused.

To this opinion M. Marr. seemeth to encline, saying, that in default of those whiche are returned, the Iustices may take a Iurie *de circumstantibus*, : And hereunto also the Statute (3. H. 8. ca. 12.) sheweth some further consente, in that it giueth power to the Iustices, by their discretion to commaund the Shirife or his Deputie, to adde, alter, or diminishe, the names of the pannell, which, if he refuse to do it, he shal forfeit xx. *li.* for his contempt. Neither is it to be obiected, that men being all of one Shire, maye not take knowledge of things done in diuerse Hundreds: Seing they haue diuers occasions of meeting togither, as at the Countie Courts, the Shirifes turnes, the Assises, & generall Quarter Sessions. And if a Iurie of one Hundred would make presentmēt of an offence done within anye parte of the Shire, (out of their own Hundred,) this were good in Law. Besides which, if M. Marr. mirture be followed, fewe of them that do appeare,

E.g. shal

shall lose their labour, whereas nowe the most of them do come in vaine.

How they of the *Iurie* must be sworne and ordered.

But these men be not truelie Iurours till they bee sworne, as their name pretendeth, and otherwise their presentment is vtterly voide.

And yet if it should by any ouersight happen, that they or some one of them were not sworn at all, if the Recorde make mention that they be sworne, their presentment is of force ynough, for the Record maye not bee gainsaide.

The number of Iurours.

Each Iurie of Enquirie ought to containe 12. in number at the leaste, and if there bee 18. or moe, it shall not bee amisse: Yea the common order with vs is, to haue them of an odde number, as 17. 19. or 21. to the ende (as it seemeth) that if they shoulde dissent in opinion somewhat equallie, yet there shoulde bee alwayes one to weigh downe the side, and caste the ballance. But if 12. of them, doe agree, the gaine-saying of the residue can not hinder the presentement.

The Iustices ought not to commit these Iurours to anye keeper: nor to keepe them without meate or drincke: nor to carrye them out of the Towne. And yet they maye adiourne them to an other place, to giue their

their Verdite, and that may bee then taken by any two Iustices, though neyther of thē be of the *Quorum* saith Marr.

If these Iurours doe wilfullye conceale offences (presentable) & that be complayned of by Bil, thē may the Iustices chose an Enquest of persons, (whereof euerie one maye dispende fortie shillings by yere) to enquire of their concealemente: and if anye suche concealement bee founde within the yeare, euerie one of the firste Enquest shall bee amerced in full Sessions, by the discretion of the same Iustices: 3. H. 7. ca. 1. Concealement.

And because the Iurours of those dayes were yet wilfull in their concealementes, it was prouided within eight yeares after, that the Iustices of Peace should determine causes vpon information without any such presentment. But, *In vitium, ducit culpæ fuga, si caret arte*, and therefore that ordinance endured not long, as you shall hereafter perceiue.

Finally, these Iurours ought not to discouer their owne doings: for it is a parte of their oath, that they shal keepe the Queenes Counsel, and their fellowes. And we reade in Fitzh. (Tit. Coron. 207. & 272.) that to indite a man of Felonie, and then to shewe abroade to others, what they haue done

therein, hath bene taken for Felonie: Howbeit that offence is nowe taken to be finable onelie.

Of the *Articles* that are to bee giuen in charge at the *Sessions* of the Peace.

Cap. iiii.

IT was the auntient maner, that twice in the yeare at the Shirifes Turne (whiche was sometime a Court of greate auctoritie, and called the Shiremoote) the Bishop of the Diocesse, and the Alderman (or Earle) of the Shire, shoulde be presente: the one to informe the people in the lawes of God, and the other to instructe them in the lawes of the lande, Archaionom *in legibus Canuti, Cap.* 17.

And it were to be wished, that as there is commonly at euerie Assises a Sermon (vttered by some learned man) so also the like might

might be at each generall (or Quarter) Sessions of the Peace. For, seeing that the lawes of men muste be obeyed for God, it doth of necessitie ensue, that he which wyll seeke to haue man obeyed rightlie, must first cause God to be preached truelie.

The Iustices of the Peace (saith M. Fitz.) for their partes be bounde to enforme the people: And (no doubte) the charge is giuen as wel to instruct those that be ignorãt, least they offende vnwares, as to enquire of those that haue alreadie fallen into daunger by offence: and thereof it is, that many Statutes doe expresly commaund, that they shall be openlie read (or declared) at the Sessions, as you shal see in place for it.

But the manner of giuing the Charge, and receiuing the Verdite at this day, differeth from that whiche the Iustices in Eire were wont to vse: for you may see, in M. Bracton (Fol. 116.) that firste one of the Iustices did open before the whole assemblye, the benefites of the seruice in hande, the commodities of keeping the Peace: and the euilles of the contrarie: and that then the Articles of the charge were read by one and one to the Iurours, who receyuing the same at the handes of the Iustices) dyd also make aunswere in the yelding

The auntient order of giuing the charge in *Eire.*

vp of their Verdite, to eache Article seuerally, and by it selfe.

Whiche custome, as it had many profits: so is it worthie (in mine opinion) to be recontinued, and brought in vse againe: neyther oughte the multitude of the Articles (nowe inquirable) to discourage anye man in this behalfe. For, if those Lawes whiche be least seruiceable (eyther for the presente time, or for the place, or other iust respect) were onelie touched or runne ouer, by way of shorte Article: then woulde there be the more time afforded, for spéeche that mighte bée wel spente, as well in discourse of exhortation, or dehortation, as in the larger handling of suche other Statutes, whereof there is greater vse and necessitie. And this libertie, the Iustices in *Eire* themselues did vse also, as the same M. Bracton in the same place reporteth.

The points of the charge diuided.

The points of the charge that wée haue in hande, may bée reduced to a fewe heades, and that after sundrie sorts of distribution: of which (for examples sake) I wyll shewe you some: first thus,

All ỹ matters inquirable, bée ether Ecclesiasticall or Temporal: and these Temporal, be either high treason, petite treasons, felonies, or otherwise punishable and finable offen-

offences: Or thus,

All these points do either concerne God, the Prince, or Subiect: Or thus,

All these Articles bee offensiue, either against the first, or the seconde Table of the ten commaundements of God: Or thus,

All these matters bee inquirable, eyther by vertue of the Commission of the Peace, and of the Statutes therein contained, or else by power of the Statutes not comprehended within the Commission: Or thus,

All these Lawes doe prohibite thyngs contrarie to some of the foure Cardinall (or principall) vertues, Prudence, Iustice, Fortitude, or Temperance.

They may also be diuided, by the varietie of the punishments, and by some other Accidentall respects: all which I leaue to thée choice of such as shall giue them in charge, and will nowe for this time set downe the Articles themselues, after the order of the first diuision, pointing out in the firste place the Ecclesiasticall causes, and then pursuing the Temporall.

In whiche doing, first, I will omitte all such Statutes, as doe concerne, but onelye some one, or a fewe particular places: knowing that I write to the most part, who haue not to do with them. The maner of this Charge.

Secondly, I will purposely pretermit the rehearsall of the punishments, contained in the Statutes that I am to run thorow: as wel bicause those doe rather pertaine to the Iustices, thã to the Iurors, as also for that I haue an auntient Precedent, of the Iustices in Eire to make for mée, who (in their charge) did onelie deliuer the Articles in offence, without any mention of the paines due vnto the same, As it appeareth in the small volume of the old Statutes, vnder the Title, *Capitula Itineris.*

And thirdly, I will neither recite all the other partes of eche generall Statute by it selfe, nor yet comprehende them wholy and fully with others: because the first of these waies would be very long, through the often iteration of the same things: and the other would bée so crooked & comberous (through the varietie and difficultie of the exceptiõs) that the hearer would bée many times lasse before I shoulde come to the end.

I know that M. Fitz. was of the opinion, that the Iustices of Peace, oughte at their Quarter Sessions, and may at their priuate Sessions giue in charge to the Enquest, all suche matters as they haue power to determine: and this he vrgeth, aswel by the Oath of the Iustices (who are sworn to do right in al

all causes within their Commission, or the Statutes) as by the ignorance of the Iurors, who cannot be instructed but by the charge: which if it be so, I see not (for my part) how either these Iustices (that are bound to vtter all) can bee discharged, or the Iurours (that ought to heare all) can be enfourmed, without this, or some such compendious & plaine way, that may both shortly for the time, and lightsomly for the order, comprehende the substance of that which belongeth to their Enquirie.

Howbeit, as I thinke it the beste for the Iustices to rehearse al such pointes, whereof the Iurie maye make presentement before them: so yet, I holde them discharged (in my slender opinion) if they vnfold onely the articles of their Commission, & of suche other Statutes as doe expresly auctorize them to make enquirie.

For, as there be sundrie Lawes, that do giue to Iustices of the Peace a certaine (speciall (or particular) power in them, and doe not yet yelde vnto them anye auctoritie to enquire vpon the same (of whith sort be the Statutes 27.H.8.c.20: & 32.H.8.c.7. of Tithes: The Statute 35.H.8.ca.17. of Woodes. The Statute 23.El.ca.9. of Logwood and sundrie others:) So also there be diuers others, that

doe

do affoꝛd to the Iuſtices of Peace the poꝛuer of hearing and determining, and yet do not expꝛeſly giue them the name of Inquiꝛie.

And, foꝛaſmuch as they may heare and determine of theſe, by Infoꝛmation (giuen to themſelues, and by them commanded to the Jurie) it ſeemeth to me, that they bee not ſo neceſſarily bound to giue thē in charge, but that they be well ynough diſcharged, if they lie open, and be readie to receiue the infoꝛmations and pꝛeſentinents that ſhal bee offered vpon them: And of this kinde bee the Statutes of Highwaies (5. El. c. 13. & 18. El. c. 9.) the Statute of Fighting in Churche, oꝛ Churchyarde (5. Ed. 6. ca. 4.) the Statute of Informours (18. El. ca 5.) and ſundꝛie others, whereof it ſhal bee ſuperfluous to make rehearſall.

Neuertheleſſe, bicauſe I wil not, that my fantaſie ſhal either ſtand againſt his iudgement, oꝛ be pꝛeiudiciall to other mens pꝛofite, I haue contended (what I may) to deliuer the pꝛincipall & moſt ſeruiceable partes, not onelie of the Commiſsion and of ſuche Lawes as doe ſpeciallie containe their Inquiry within them, but alſo of al ſuch other Statutes as may be heard and determined by Iuſtices of the Peace at anye their Seſsions, and that in ſo narrow a roume, as (if I

be

be not, after some proofe, deceiued) they may be distinctly read ouer in a couple of houres, or little more, so that the yeres of the Kings and the other Notes, bee left vnread and passed ouer.

Ecclesiasticall causes.

IF anye person haue (wythin this halfe yere) by writing, printing, teaching, preaching, expresse deede, or acte, aduisedly, maliciously, and directly affirmed, holden, sette forth, or defended, the auctoritie, prehemynence, power, or iurisdiction Spirituall or Ecclesiasticall, of anye forraine Prince or person whatsoeuer heretofore claymed, vsed, or vsurped in this Realm, or any ꝑ Quænes dominions, or haue aduisedly, malitiously, and directlye, putte in vse, or executed any thing for the extolling, setting forth, or defence of anye suche pretended or vsurped iurisdiction, prehemynence, or auctoritie, or any parte thereof. Or if any person (compellable to take the Oath of Recognition of the Quænes Maiestie to bee supreame Gouernour in all causes wythin hir Dominions) haue refused to take the saide Oath, after lawful tender thereof to him made 1. Eli. c. 1. 5. El. ca. 1. enquirable by words of 23. Eli. ca. 1.

Treason the third offēce. Extoll any forraine power.

Refuse the Oath.

If

Ecclesiasti-call causes.

Premunire Pope.

If any person vnder the Quéenes obedience haue at anye time (within this yeare) by Writing, Ciphering, Printing, Preaching, or Acte, aduisedlye holden, or stoode with, to extoll, or defende the power of the Bishoppe of *Rome*, or of his Sée heretofore claymed, or vsurped within this realme: or by any speech, open deede, or act, aduisedly attributed any suche maner of auctoritie to the saide Sée of *Rome* or to the Bishop therof, within any the Quéenes Dominions, yée shall present him, his Abettours, procurers, counsellours, ayders, and comforters. 5. Eliz. ca. 1.

Treason Withdraw from obedience.

If anye person haue by anye meanes practised to absolue, perswade, or withdrawe, any other wythin the Quéenes dominions from their naturall obedience, or (for that intent) from the religion nowe established here, to the Romishe religion, or to moue them to promise obedience to the Sée of *Rome*, or other estate: Or if any person haue béene willingly so absolued, or withdraun, or haue promised such obedience.

Misprision of Treason.

And if anye person haue willinglye ayded or maintained any such offendor, or knowing such offence haue concealed it, and not within twentie dayes disclosed it to some Iustice of Peace, or other higher Officer. 23. Eli.

Eli. cap. 1.

Ecclesiasti-call causes.

If any person haue saide or song Masse, or haue willinglye hearde Masse 23. Elizab. cap. 1. *Masse.*

If any person haue vsed, or putte in vre, anie Bull, Writing, or Instrument of absolution or reconciliation, or of other sorte, gotten from the Bishoppe of *Rome*, or Sée of *Rome*, or from any person clayming auctoritie from the same: Or haue by colour of any such taken vpon him to absolue, or reconcile any person: or haue published any such Bull or Instrument. Or if any person haue aided, cōforted, or mainteined any such offendour, to the intente to vpholde suche offence. Bull. *Agnus Dei, &c.* *Treason.*

If any person (to whome suche Bull or Instrument hath bene offered or persuaded) haue not within sixe Weekes nexte after signified the same to some of the Queens priuie Counsell, or to the Lorde Presidente of the *North*, or of *Wales*. Misprision of Treason.

If any person haue brought hither from the Bishoppe, or Sée of *Rome*, or from anye person auctorized, or clayming to bee auctorized by any of them, any *Agnus Dei*, crosses, pictures, beades, graines, or such like superstitious things, and haue the same delyuered, or caused, or offered to bee deliuered, *Premunire.*

to

Ecclesiasti-call causes.

to any the Quéenes subiects to vse or weare in any wise: and if anye person haue to such intent receiued or taken the same, and haue not apprehended the offerer thereof, nor within three dayes after disclosed him to the Ordinarie, or to some Justice of the Peace, nor within one daye deliuered the thing to some Justice of the Peace, 13. Eliz. cap. 2: 23. Eliza. cap. 1.

Felonie Coniuration.

If any person haue vsed Inuocation, or Coniuration of euill spirites for any cause: or haue vsed Witchcraft, Inchauntment, Charming, or Sorcerie, whereby anye person is killed or destroyed, 5. Eliz. ca. 16.

Prophecying.

If anye person haue within these sixe moneths aduisedly aduanced, published and set forth, by writing, printing, open speach, or déed, to any other person, any fantastical, or false prophesie, vpō armes, fields, beasts, or badges, or vpon any time, name, bloudshed, or warre, to the intent to make thereby rebellion, dissention, losse of life, or other disturbance wythin the Quéenes Dominions 5. E. ca. 15.

Felonie Set foorth how long the Queene shal liue.

If any person haue, by setting of figure, casting of Natiuitie, or by Calculation, Prophecie, Witchcrafte, Coniuration, or other vnlawful meanes whatsoeuer, sought to know, & haue set forth by expresse words, déde

déde, or writing, how long hir Maiestie shal liue, or who shall raigne after hir decease: Or else haue aduisedly, and with a malitious intent againste hir maiestie, vttered any directe prophecie to such purpose. And if any person haue ayded, procured, or abetted any such offenders, 23. El. ca. 2. Ecclesiasticall causes.

If any person haue vnlawfullye procured any other to commit wilful and corrupt Periurie, in any cause depending in sute in anye of the Quénes Courtes of Recorde, or in any Léete, Court Baron, Hundred, or Courte of auncient demesne: or haue corruptly subborned any witnesse sworne to testifie in *perpetuam rei memoriam*: or if any person haue vpon such procurement, or by his owne acte wilfully committed such Periurie, 5. El. ca. 9: & 14. El. ca. 11. Periurie.

If any person haue (within these thrée moneths) by contemptuous, or reuiling words, or haue aduisedly in any other wise, depraued, despised, or reuiled the blessed Sacrament of the body and blood of Christ, 1. E. 6. ca. 1: & 1. El. ca. 1. Sacrament.

If any Parson, Vicar, or Minister, haue (since the last Assises) refused to vse the cõmon prayers, or to minister the Sacraments according to the booke of common prayers, or (wilfully standing in the same) haue vsed any o- Seruice and Sacramentes.

Ecclesiasti-call causes.

ther for me in open prayers, or in administration of the Sacraments, or haue spoken any thing in derogation of the sayd Booke, or any part thereof: Or if any person haue (since that time) in any playe, song, or ryme, or by any open worde, spoken in derogation of the sayde Booke, or of any thing therein contained: Or haue caused, or maintained anye Parson, Vicar, or Minister, to say any Common prayer, or to minister anye Sacramente in other manner than after the sayde booke: Or haue interrupted any Parson, Vicar, or Minister, to say open Prayer, or to administer any Sacrament, according to the sayde Booke, 1. Elizab. cap. 2: & 23. Elizab. cap. 1.

Repaire to Church.

If any person (being aboue the age of xiij. yeares, and not hauing lawfull and reasonable excuse to bee absent) haue not repayred and resorted to his or hir parishe Churche, or Chappell accustomed, or (vppon let thereof) to some vsuall place where Common prayer is to be vsed, vpon euery Sonday, and other holydaye: and haue not there orderly and soberly abiden, during the time of suche Common prayer, preaching, or other seruice of God: and how long such person hath not so repayred and resorted, 1. Eliz. ca, 2: & 23. Eli. ca. 1.

If

If any person haue kepte or maintayned any Schoolemaister whiche resorteth not to the Church, or is not allowed by the Bishop, or Ordinarie of the Diocese, 23. Elizab. cap.1. — Ecclesiasticall causes. Schoolemaister.

If any person haue malitiously striken any other with any weapon, in any church, or Churchyard, or drawne any weapon there to that intent, 5.E.6.ca.4. — Fighting in Churche or Churchyarde.

If any person haue kept Faire, or Market in the Churchyard, Stat. Winton.13.E.1. — Faire or Market in Churchyarde.

If any person haue feloniously taken goods out of any Church, or Chappell. — *Felonie.* Robbe Church or Chappell.

Lay causes.

If any person haue counterfaited the Quéenes money, or haue brought false money into the Realme, counterfaite lyke the money of *Englande*, knowing the same to bée false, to make marchandize or paiment therewithall, 3.H.5.ca.7 : & 25.E.3.ca.2. — *Treason.* Money.

Felonies in lay causes.

If any Seruant haue killed his or hir Maister, or Mistresse: or any Wife hir Husbande: or any Ecclesiasticall person his Prelate, 25. E.3.ca.2. — *Petite Treason.* Seruant, & Maister. Husbande and Wife. Clerke and Prelate.

Lay cauſes.

Murder. If any perſon haue (of prepenſed malice) killed or murdered an other, openly, or priuily, whether he that was killed were an Engliſhman, or a Straunger, liuing vnder the protection of the Quéene.

Poyſoning, murder. If any haue wilfullye killed any other by poyſoning: and who be his ayders, abetters, procurers, and counſellours, 1.E.6.ca.12.

Manſlaughter. If anye perſon haue by chaunce medley felonioully killed an other.

Cut out tõgue, or put out eyes. If any perſon haue of malice prepenſed, cut out the tongue, or put out the eyes, of any of the Quéenes Subiectes, 5.H.4.ca.5.

Gaoler handeling ſtreightlye his priſoner. If any Gaoler, kæper, or vnderkéeper, of a priſon, haue by dureſſe and paine compelled any his priſoner, to become an appecher of others againſt his will, 14.E.3.ca.10.

Buggerie. If any perſon haue committed the deteſtable vice of Buggerie, with man, or beaſt, 25.H.8.ca.6: & 5.El.ca.17.

Rape. If any man haue rauiſhed a mayde, Widowe, or wife, aboue ten yeares of age, againſt hir will, although ſhe conſented afterwarde, W.2.ca.34.

Childe. If any man haue carnally knowne and abuſed any woman childe, vnder ten yeres of age, though ſhe conſented before, 18.El.ca.7.

Take woman. If anye perſon haue taken a maiden, Widowe, or wife, hauing lands or goodes, or being

ing heire apparaunt to any, againſte hir will vnlawfullye (other than his warde, or bondwoman) and of his procurers, abetters and receiuers, knowing thereof, 3.H.7.ca.2. Lay cauſes.

If any perſon haue robbed an other, going or riding by ỹ way, or otherwiſe, how much, or how little ſoeuer it bée that he taketh from him: or haue priuily and fraudulently piked or cut the purſe of an other, being vppon him. 8.El.ca.4 Or haue robbed any houſe by daye, or by night, any perſon being in the ſame, and thereby put in feare: Or hath robbed anye perſon in any parte of his dwelling, the owner, wife, children, or ſeruaunts, being therein, or within any other place within the precinct thereof, and then being waking, or ſléeping: Or hath robbed any perſon being in a tent or bothe, in a Faire or Market, the owner, his wife, children, or any ſeruaunt being then within the ſame, ſléeping, or waking, 5.E.6.ca.9. Robberie. Cutpurſe. Robbe houſe. Boothe, or Tent.

If any perſon, or perſons, haue felonioully taken the goods of any other: and whether the ſame be aboue xij.d. in value or vnder. Larcinie, and *petite Larcinie*.

If any Purueyour for the Quéenes Maieſties houſe, or his vndertaker, Deputie, or ſeruant, haue made any purueyance without warrant, and haue caried any thing away againſt the conſent of the owner, being aboue Purueyours.

Lay causes.

xij.d. in value, 28.E.1.ca.2: 18.E.2.ca. *vltim.*: 5.E 3.ca.4: 2.& 3. Phil.& Mar.cap.6.

If any Purueyour of the Quéene, or his Undertaker, Deputie, or Seruant, haue taken any carriage in any other maner than is contained in his Commission, 36. E.3.c.2. Or haue made purueyance without the testimonie and appraisement of the Constables, and foure honest men of the towne, and without deliuering Tales or Indentures vnder his Seale, testifying his purueiances, the goodes being aboue xij.d. in value, 5.E 3.ca.2: 25.E.3. ca.1 Or hath taken anye Sheepe with their wolles, betweene Easter and Midsomer, at small prices, and carried them to his owne house, and shorne them, 25.E.3.ca.15.

Quære, if the felonie of Purueyours (made 36.E. 3. ca. 6.) be not altered by 23.H.6.ca.14.

Hawke embeselled.

If any person haue founde a Falcon, Tercelet, Lanor, Lanoret, or other Falcon, that was lost, and hath not forthwith brought it to the Shirife, that he might proclaime it, but did steale and carrie away the same, 34.E 3.ca.22: 37.E.3.ca.19.

Seruant embeselling goods deliuered.

If anye Seruaunt (being xviij. yeares of age, and not being an Apprentice) hath gone awaye with, or hath conuerted to his owne vse, any money, Iewels goodes, or cattails

tails of his maisters or mistresses, and of his or hir deliuerie to keepe, of the value of fortie shillinges, to the intent to steale the same, 21. H.8.ca.7: 5.El.ca.10. Lay causes.

If any person haue by night broken anye House, Tower, Walles, or Gates, and hath entred in with an intent to do any robberie, murder, or other felonious acte there: Or if any person haue burned any dwelling house: or haue by nighte burned any barne neare to a dwelling house. Burglarie. Burne house or barne.

If any person, imprisoned for felonie, haue broken prison: 1.E.2. Or if any other person haue broken the prison for such a prisoner, by whiche he escapeth: Or if anye Gaoler haue willingly suffered suche a prisoner to escape: and if any person, being arrested for felonie, haue bin rescued, and by whome. Breake prison.

If anye person haue deuised vnlawfullye and malitiously to set at libertie any prisoner endited of treason (concerning the Quéenes person) and haue expressly vttered the same deuise, 14.El.ca.2. Enlarge a Prisoner.

If any person haue deuised malitiouslye to take or keepe from the Quéene, any of hir Castles, Townes, Fortresses, or Holdes, or to raze, burne, or destroye anye of them malitiouslye and traiterouslye (the same hauing munition, or Souldiours therein of hirs) Take, keepe, or destroy Castles. &c.

Lay causes.

and haue vttered the same deuice, 14. El. ca. 1.

Hunting by night.

If any person haue vnlawfully hunted in the night, in any Forest, Park, or Warrein, or with painted faces, visours, or other disguisinges, to the intent to be vnknowne, and haue vpon examination by one of ỹ Quéenes counsell, or by a Iustice of Peace of the same Shire, wilfullye concealed such Hunters or hunting, or haue disobeied any arrest for such hunting, or made rescue to any person warranted to arrest such hunter, so that the warrant was not executed, 1. H. 7. ca. 7.

Multiplying.

If any person haue practised the arte of multiplication of gold or siluer, 5. H. 4. ca. 4.

Conuey Sheepe.

If any haue the second time brought, sent, or receaued, into any shippe or bottome, any rams, shéepe or lambes being aliue, to bée conueyed out of the Quéenes dominions, or haue procured the same, 8. El. ca. 3.

Conuey horses into Scotlande.

If any person haue solde, exchaunged, or deliuered, within *Scotlande*, or the batable grounde, to the vse of any Scot (without the Quéenes licence, vnder hir great Seale) or solde, exchaunged, or deliuered to any Scot within *England*, *Wales*, *Barwick*, the Marches, or batable grounde, to the intent to bée conueyed into *Scotlande* (without such licence) any horse, gelding, or mare: And if anye haue so bought any of ỹ same, 23. H. 8. ca. 16: 1. E. c. 7.

If

Lay causes.

Slaunderous newes.

If any person haue aduisedly, and with a malitious intent against the Quéenes Maiestie) deuised, written, printed, or set forth any booke or writing, containing any false, seditious, and slaunderous matter, to the defamation of hir Maiestie, or to the incouraging or mouing any insurrection or rebellion within hir Realme or Dominions: or haue (aduisedly, or with a malitious intẽt against her Maiestie) procured any such booke or writing to be written, printed, or set forth: Or haue malitiously, by any wordes, writing, or printing, wished, or desired her Maiesties death, or depriuation, or any thing directly to that effecte: and if any haue ayded, procured, or abetted anye such offendour, 23. Elizab. cap. 2.

Rebellious assemblie.

If anye persons (of, or aboue, the number of twelue) haue bene assembled, and haue intended, gone about and practised, with force of armes vnlawfully to chaunge any Lawes of this Realme, or to cut or cast downe anye inclosure of Parke, or inclosed ground, or the bankes of any fishponde, or any conduit head or pipe, to the intent they should lie open, or voide, or to haue any Common or way there: Or to destroy the Déere or Conies in anye Parke or Warrein, or Douehouses, or Fish in Pole, or pond, or to cut down any houses,

Lay causes.

Barnes, Milles, or Bayes, or to burne anye stacke of corne or graine, or other vsuall sustenance of men: and (being commaunded by the Shirife, or any Justice of Peace of the Shire, or by the Maior, Shirife, Justice of Peace, or Bailifes of the Citie, Borough, or Corporate towne, where the assembly was, by proclamation in the Quenes name to departe to their houses) haue notwithstanding continued togither one houre after, or haue after that, forcibly attempted to do any such thing.

And if any person haue vnlaufully by ringing of Bell, sounding of Trumpet, Drume, Horne, or other instrumente, or by firing of Beacon, or by malitious speeche, or Outcrie, or by setting vp or casting any writing, or by any other acte, raised, or caused to be rayfed twelue persons, or aboue, in suche manner, and to anye suche intent as is aforesayd, and they (being commaunded by proclamation, as before) haue neuertheleffe continued togeather one houre after, or haue afterward attempted forcibly to doe anye of the sayde thinges: And if anye the wife, or seruaunt of any the sayd assembled persons, or if any other person, haue willinglye and without compulsion, deliuered, or conueyed money, Harneffe, weapon, or victuall to anye of the

Lay causes.

the sayde persons assembled, during their aboade togeather as before. And if anye person haue hindred or hurte anye that did proclayme, or wente to proclaime, as before: and if anye the parties so assembled (knowing of that hinderance, or procuring it, haue neuertheleſſe afterwarde committed or put in vre anye the thinges aforesayde: And if any persons (to the number of fortye or moe) haue so assembled to the intente to doe anye the sayde thinges, or any other Felonious or Rebellious acte, and haue continued togither three houres, after suche Proclamation made, at or nigh the place of assemblie, or in some market Towne nexte adioyning, and after notice to them thereof giuen, 1. Mar. Parl. 1. cap. 12: & 1. Elizab. cap. 17.

Souldiour, Mariner, or Gunner, departing.

If anye Souldiour (entred a Souldiour of Recorde) and hauing taken parte of the Queenes wages, or any Mariner or Gunner (hauing taken prest wages to serue the Queene on the Sea) haue not accordinglye gone to his captaine (vnleſſe he were letted by notorious sickneſſe, or other impediments from God) or haue departed from his Captaine, without his licence vnder his seale, 18. H. 6. ca. 19: 2. & 3. E. 6. ca. 2: 4. & 5. Phil. & Mar. ca. 3: & 5. Eliz. ca. 5.

If

Lay causes.

Egiptians.

If any Straungers, calling themselues, or being commonly called Egiptians, haue remained in the Realme one moneth: And if any person (being 14. yeres of age) which hath bene seene, or found in the fellowship of such Egiptians, or which hath disguised himselfe like to them, haue remained here or in *Wales* by ỹ space of one moneth, either at one time, or at seuerall times 1. & 2. Phil. & Mar. ca. 4: 5. Eliz. ca. 20.

Roges.

If anie Vacabond (or Roge) haue after 60. dayes nexte after his marking through the eare, or iudgement to be so marked, fallen agayne to Rogish life (being then 18. yeares olde, or aboue:) And if any such Roge, being vpon his saide seconde conuiction taken into seruice for two yeares, haue departed within those two yeares against the will of him that by Recognusance toke him into seruice: And if any Roge being conuicted in the second degree, haue at any time after bene conuicted of Rogish life 14. Elizab. ca. 5: 18. Elizab. cap 3. There canne be none accessaries to these two last felonies.

Felonies omitted.

Note that some felonies be here omitted, either because there is none vse of them now, or else for that they be for particular places, as:

Prouisors.

The felonie of Prouisours, 13. R. 2. Stat. 2. ca. 3.

Woolles.

The felony of Woolles & Woolsellers, 18. H. 6 ca 15. and certaine felonies in the Statutes of the Staple. 27. E. 3.

E.3. whereof I doubt. Lay causes.

The felonie of *Powdike*, 22. H. 8. ca. 11: & 2. & 3. Phi. & Mar. ca 19. *Powdike.*

It seemeth also by the 25. E. 3. c. 2. that there is a felonie, for riding armed &c. which (I thinke) is not so construed now. *Armed.*

If any persons haue commaunded, counsailed, waged, or procured to be committed any Petit treason, Murder, Manslaughter, Rape, Robberie, Burglarie, or other the felonies aforesaide. Accessaries before.

If any persons knowing the saide Felons, haue receiued, cõforted, aided, abetted, or fauoured them, before their attainder, or after. Accessaries after.

Hitherto of Felonies and their Accessaries, in Lay causes.

If any person haue mayhemed another of any member, whereby he is the lesse able to fighte, as by putting out his eye, striking off his hand, finger, or foote, beating out his foretæth, or breaking his skull: And of their Accessories. Mayheme.

If any haue committed vnlawfull assault, beating, wounding, or such like trespasse, against the bodie of any man: Or haue with force and against the law taken the goods of an other, or haue done any Trespasse in the lands of an other. Commission of the Peace. Trespasses.

If any Ordinarie, Archdeacon, Officiall, Shirife, Eschaetor, Coroner, Undershirife, Bayly,

Lay causes. Bayliffe, Gaoler, or other officer, haue by colour of his office, or for doing his office, taken a greater, or more excessiue reward or Fée, than belongeth to him: or haue taken any Fée or reward for expedition in doing his office, or haue vnlawfully exacted anye Oathe, or other vnoue thing: Commission of the Peace.

Eschaetor. If anye Eschaetor (other than of suche a Citie, Borowe, or Towne, as hath auctoritie to make Eschaetors within themselues by letters Pattẽts of the Quéene, or hir Progenitors) haue taken vpon him that office in this Shire or occupied it by himselfe, or an other, and had not then in this Shire, Lãds, Tenements, or Rents, for life at the least of xx. pounds by yeare: or haue sold, or sette to ferme that office, or made any Deputies for whome he will not aunswere, and whose names he hath not certified within 20 dayes after into the Eschaequer, 2.E.4.9.

Or if any Eschaetor hath taken for the execution of any *Diem clausit extremum*, or other Writte in one Countie, aboue fourtye shillinges in all: or that xl. shillinges where the landes are not founde to be holden *in Capite*: 23.H.6.ca.17: & Fit. 143. Or hath taken for the finding of anye Office of landes (not exceeding fiue pounds by yeare) aboue fiftéene

fifténe ſhillings in all, for all the thinges thereof, 33. H. 8. ca. 22. Lay cauſes.

If any Shirife haue letten his Countie, or anie his Bailiwikes, Hundreths, or Wapentakes: or haue returned in anye pannels, any Bailifes, Officers, or their ſeruaunts, or ſeruaunts ſeruaunts, or haue refuſed to lette to baile (vpon ſufficient ſuerties) anye perſon being in his cuſtodie, becauſe of any action perſonall, or becauſe of Enditement in treſpaſſe, and not being in for any condemnation, execution, vtlawrie, excommunication, ſuertie of the Peace, or commaundement of anie Iuſtice, or for being a vagabound: Or haue taken anie Obligation by colour of his office, but only to himſelf, and vpō the name of his office, and vpon condition onelie to appeare according to the Writte or Warrant: Or haue taken for an arreſt aboue twentie pence. Or if he, or anie other miniſter, haue taken anie thing, for making of anie Return or Pannell: or aboue foure pence for the copie of a Pannell: or aboue foure pence for the ſaide Obligation, or for anie warrant or precept: Or anie Bailie aboue foure pence for making anie arreſt: or the Gaoler aboue foure pence, vppon the committing to his warde of anie perſon arreſted, or attached, 23. H. 6. ca. 10. Shirifes and their Miniſters. &c.

Lay causes.

Shirifes, arrefting, or leauying fine for Enditementes in his turne.

If any Shirife, or other his miniſter, haue arreſted, or impriſoned, or cauſed any fine, or raunſome, or amerciament to be leauied of any perſon by reaſon of any enditemente, or preſentment made in the Shirifes turne, or lawdaye, without proceſſe frō the Juſtices of Peace for the ſame firſt obtayned: Or haue not brought in ſuch enditemēts and preſentments to the Juſtices of the Peace, at their next Seſſions, 1. E. 4. ca 2.

Shirifes entring of plaints and leauying amercementes.

If any Shirife, or any his miniſters, haue entred into his Booke, any plaintes in anye mans name, not being preſent in the Court, either in his owne perſon, or by ſufficient and honeſt Attourney, or Deputie: Or haue entred anye moe plaintes than the Plaintife ſuppoſeth that he hath cauſe of action for: or haue leauied the Shire amerciaments without booke endented betwene them and two Juſtices of the Peace: Or if the Baylie of the Hundred haue made default in warning or executing any warrant againſt any Defendant in the Shirifes Court. 11. H. 7. ca. 15.

Bailie ſeruing warrant.

Shirifes muſt ſhew the Eſtreats vnder the Eſchequer ſeale.

If any Shirife, or his miniſter, haue leauied any the debtes of the Quéene, withoute ſhewing to the parties the Eſtreates of the ſame, vnder the Seale of the Eſchequer, 42. E. 3. ca. 9.

If any Shirife, or Gaoler, haue denied to receaue

receaue felons, by the deliuerie of any Constables or townships, or haue take any thing for receiuing of such, 4 E. 3. ca. 10. Lay causes. Shirife and Gaoler.

In liberties, the Baylifs, Stewardes, and other miniſters there, haue like fées and puniſhmentes, for extortion, as Shirifes and their miniſters haue out of liberties 27. H. 8. cap. 24. Fees in liberties.

If any Coroner haue refuſed to doe his office vppon the viewe of a deade bodye by miſaduenture, without taking any fée therefore, 1. H. 8. ca. 7. or haue taken vppon the viewe of the bodye of a man ſlayne, or murdered, aboue thirtéene ſhillinges foure pence, of the goods of the ſlaier or murderer, if he had goods or (otherwiſe) of the towne, where hée was ſlayne in the day time and was ſuffered to eſcape 3. H. 7. ca. 1. Coroner.

If any Ordinarie, or his Scribe, or Regiſter, haue taken more, or greater fées, for the probate of a Teſtament, or for Letters of adminiſtration, than he ought to take, that is to ſay, fiue pence for the Scribe, for writing the probate of a Teſtamente, that ſhall bée brought written in parchment, and likewiſe fiue pence for the Adminiſtration, where the goodes of the Teſtator, or Inteſtate be not aboue fiue pounds: If the goods be aboue fiue pounds, and not aboue fortie pounds, then Ordinary.

Lay causes.

two shillings sixe pence for the Ordinarie, & twelue pence for the Scribe. If they exceede fortie pounds, then two shillings sixe pence for the Ordinarie, and two shillinges sixe pence to the Scribe, or else one penie for euery ten lines at ten inches length, at the Scribes election: the like shall be giuen for euery copie of a Testament, or Inuentarie, or else after the rate of lines as before, 21.H.8.ca.5.

If the Ordinarie haue cited any man to beare witnesse in the Spirituall Courte: or haue exacted any Oth in any cause, other than Testamentarie, or Matrimoniall.

Parson, Vicar, Curate.

If any Parson, Vicar, or Curate, haue taken aboue iiij.pence for entring in ỹ Church booke the licence of a sicke person to eate flesh vpon the Wednesdayes: 5.Elizab.cap.5: Or aboue two pence for registring of a Testimoniall of any seruaunt, departing from one place to another, 5.Eli.ca.4.

Quere, If the taking of Mortuaries (or corpes presẽts) against the Statute 25.H 8.c.6. be extortiõ, or no.

Clearke of the Peace.

If the Clearke of the Peace haue taken aboue twelue pence for the inrolling of the bargaine and sale of any lande, not exceeding fortie shillings by the yere: or aboue two shillings sixe pence, if the land exceede that value by the yeare, 27.H.8.ca.16: Or if the Clearke of the Peace haue taken aboue two shillings

in

in all, for any licence and Recognuſance of a Badger, Drouer, Kidder, or Lader, and for the regiſtring thereof, 5. El. ca. 12. Or haue taken aboue twelue pence for a Recognuſance of him that taketh a Roge into his ſeruice for one yere, 14. El. ca. 5. Lay cauſes.

If the Clearke of anye Juſtice of Peace, haue taken aboue twelue pence for anye Recognuſance of an Alehouſe keeper, or Tipler, 5. E. 6 ca 25. Iuſtices cleark.

If the Clearke of the market hath taken any common fine, to diſpence with faultes: or hath ridde with moe than fiue horſes, or hath taried longer in the countrey than the neceſſitie of his buſineſſe required. 13. R. 2. c. 4. Clearke of the Market.

If any Officer haue in any Towne taken Scauage, or Shewage (that is to ſaye) anye thing for the ſhewing of wares, Marchaundiſe that be truelye cuſtomed to the Queene before, 19. H. 7. ca. 8. Scauage.

If the Maior of this Towne of *Maidſtone* (and ſo of other Townes, in other Shires) haue taken aboue j. d. for ſealing a Buſhell meaſure, or aboue ob. for any other meaſure: or aboue j. d. for ſealing C. weight, or aboue ob. for halfe C. weight, or aboue a farthing for any leſſe weight, 7. H. 7. ca. 3: & 11. H. 7. ca, 4. Seale weights.

Sundrie other fees of Officers there be, as of Alnageours, Gaugeors, Sergeants at Armes, and others wherof there is not ſo common vſe, & therefore I omit the. *Fees omitted.*

Lay causes, Purueyours.

If any Purueyour of the Quéenes Maiestie haue taken any thing of the value of fortie shillinges or vnder, without readye payment therefore made: If any Constable, or Borsholder haue not (vppon request made) assisted the owners to resist the Purueyours so taking: And if any of the Quéenes Officers haue procured any to be arrested or vexed for such resistaunce 20.H 6.ca 8.

If any Purueyour haue taken, or felled, any timber trées (méete to be barked) but onely in barking time, except it were for the reparation, or building of the Queenes houses, or shippes: Or haue taken anye more than the very timber of such trées 5. Elizab. cap.8.

If any suche Purueyour haue taken anye thing of any man, to the ende to spare him: or haue taken Corne by anye other measure than by the striked Bushell, or by any more than eight such Bushels to the Quarter: or haue taken carriadge therefore, without making readie payment, 25.E.3.ca.1: 36.E.3.c.3: & 1.H.5.ca.10.

Vniuersities. Of Purueyours within fiue miles of *Oxenforde*, or *Cambridge* see.2.&.3 Phil. & Mar.ca.15:14.Eliz.ca.11.

Informour. If anye common Informour, or Promoter (as he is commonlye called) haue compounded, or agréed with any person for any offence against

againſt any penall Lawe, without the order or conſente of ſome of the Courtes at Weſtminſter, or haue willingly delayed, or diſcontinued his ſute once commenced, 18. Elizab. cap. 5. Lay cauſes.

If any man haue raiſed hue and crie without cauſe, or (it being raiſed) haue not bene readie at the commaundemente of the Shirife, or at the hue and crie of the Countrie, to purſue and arreſt Felons, or ſuche as haue daungerouſſye hurte anye man: And if the Shirife, or anye Baylifes, haue not followed the hue and crie with horſe and armour W. 1. 3. E. 1. ca. 9: 3. E. 1. *Officium Coronatoris:* Statut. Wincheſter, 13. E. 1. Hue and crie.

If the Watche of twelue men in euerye Borough, haue bene kept from ſunne riſing to ſunne ſetting, betwene Aſſention day and Michaelmas daye, to arreſt ſtraungers that paſſe by: Statut. *Winton.* Watch.

If any Lorde of the Soyle haue not enlarged the high waye from market to market, ſo that no dike, buſhe, nor tree (except greate trees) be within two hundreth foote of eache ſide thereof: Statut. *Winton.* High waies.

If any perſons (excepte the Quenes ſeruauntes and officers, in doing her ſeruices, and their companye, aiding them in that behalfe) haue ridden or gone armed, by day Ride or goe armed.

Lay causes.

or night: or haue brought force, in affraye of the people, before the Queenes Iustices, or otherwise: Statute *Northampton*, 2. Edw. 3. cap. 3.

Escape by negligence.

If any person arrested, or imprisoned for Felonie, haue bene negligently suffered to escape, 1. R. 3. ca. 3.

Barrettours, Maintainours, Embraceours.

If any bée a Barrettour, or a common quarrellour, or otherwise of euill name and fame, 18. Edw. 3. cap. 2: 34. Edw. 3. cap. 1: Or a Maintainour of quarrels, or an Embraceour of Iuries, 33. H. 8. cap. 10: & 37. Hen. 8. cap. 7.

Barrettour.

The worde (Barrettour) may seeme to bee deriued, eyther of the French *Barat* (and so it seemeth to be taken in the Statute of Champartie, W. 2. cap 49.) signifying deceipt. so that Barrettour shoulde notifie a deceiuer: or elle of the Latine *Baratro* (or *Balatro* as some write it) whiche betokeneth a vile knaue, or vnthrift, and (by a *Metaphore*) a spotte in the common wealth. But whatsoeuer the worde doe properlye denote, common vse (*Quem penès arbitrium est, & ius, & norma loquendi.*) taketh it for a common quarrellour, or a maintaynour of *Quarrels*: and in that sence I thinke it to stande in the olde Statute called *Ragman*.

Champartours.

If anye be a Champartour, that is to say, one that moueth pleas or suites, or causeth or procureth them to bée moued, at

is

his owne costes, to the ende to haue parte of the Lande, or other thing in variaunce. 33.E.1. Lay causes.

If any Iurour in any Enquest here, haue taken any thing of any man to make his presentment fauourable 5.Ed.3.ca.10. Iurour.

If any person haue by himselfe, or other for him, giuen any liuerie of signe of companie, or badge, or retained any man, other than his houshold Seruaunt, Officer, or learned man in the Lawe, 1.H.4.cap.7: 2.H.4. ca. 21: & 8.E.4.ca.2. Liueries of companies & badges.

If anye companye of men (other than men of Fraternities, and men of Artes in Cities, and Boroughes) haue made any one generall suite of Clothe, Hoodes, or Hattes amongest them, to bee knowne by 7.H.4.cap.14.

If anye person haue (within these three moneths) aduisedlye, and with a malitious entent agaynste the Queenes Maiestie, of his owne imagination spoken any false seditious, and slaunderous newes, or sayings of the Queenes Maiestie, or haue (within the sayde tyme) aduisedly, and with a malitious intent, spoken any suche newes or tales, to the slaunder and defamation of oure sayde Queene, of the reporting or speaking of anye other, 23.Eliz.ca.2. False newes.

Lay causes.

If any person haue by writing, or open speach notified, that the eating of Fish, or forbearing of Flesh, mentioned in the Statute for the Wednesday (5. Eliza. cap. 5.) is of necessitie for saluation of soules, or is the seruice of God, otherwise than as other politicke Lawes be, 5. Eliza. ca. 5.

False tokens or letters.

If any person haue falsely and deceitefully gotten into his possession anye money, or other things of anye other mans, by colour of false priuie token, or of counterfait letter, made in an other mans name. 33. H. 8. cap. 1.

Vagabonds and Roges.

If anye haue vttered them selues to bee Proctours, hauing no sufficiente auctoritie, or haue gone about idle, vsing craftie games, or pretending skill in Palmestrie, telling of destinies, or other abused sciences: or (that being whole and able in bodie, and not hauing lande, Maister, nor meane to get their liuing) can giue no reckning howe they gette their liuing lawfully: If any Fencers, Bearwards, Common players in Enterludes, or Minstrels (not belonging to anye Baron or personage of greater degree) Juglers, Pedlers, Tinkers, or Petit chapmen, haue wandred about without licence of two Justices of Peace: If any common labourers (being able in bodie) haue vsed loytering, or refused to

worke

Lay causes.

worke, for the appointed wages: If any haue counterfaited licences, or passeportes, or haue vsed such, knowing them to be counterfaite: If any schollers of *Oxford* or *Cambringe*, haue gone about begging, not auctorized vnder the Vniuersitie Seale, or shipmen, pretendyng losse by Sea, or deliuered prisoners begging for their fees, or trauelling to their Countrey or friendes, not being lawfully licensed: If anye seruaunte departing out of seruice, bee founde with a counterfaite Testimonial And if any pore bodie haue trauelled from home towards *Bathe* or *Buckstone*, without lawful licence, or being prouided for in his or hir Parishe, haue notwithstanding secretlye wandred abroad without licence: For al these bee Roges and Vagabounds. 14. Elizabeth. cap. 5.

Officers not punishing Roges.

If any Constable, or Borsholder, haue not done his beste endeuour to apprehende suche Roges, as haue begged or made aboad wythin their limits, or haue wilfully suffered anye of them to escape punishment: And if any person haue giuen harborow, or other relefe to any such Roge: If any person haue hindered the execution of the Statute concerning Roges, or haue made rescous to any person endeouring the execution thereof 14. Eliz. ca. 5: & 18. El. cap. 3.

Giuing relefe to Roges.

Disturbing of the execution of the law against Roges.

Lay causes.

Riots, Routs, vnlawfull assemblies.

If any persons (to the number of three, or aboue) haue bene riotously assembled, to beat any man, to enter vpon a possession, or to doe any such vnlawfull acte, and haue done it in deede, or attempted to doe it: Or haue bene assembled togither in Routes for anye common quarrell: or otherwise vnlawfullye against the Queenes Maiesties Peace. Commission vnder the name of Conuenticles.

Rebellious assemblies.

If any persons (aboue the number of two, and vnder xij.) being assembled, haue intended vnlawfully with force to murder, or slea any of the Queenes subiects: Or to cut or cast downe any inclosure, or bankes of anye fishe ponde, or conduite heade, or pipe, or to do any the deedes (mentioned in vnlawfull assemblies before) and haue not departed vppon proclamation, but haue attempted to doe any of those thinges.

Or if anye person (being moued to make anye rebellious assemblie) haue not within 24. houres after disclosed the same to a Iustice of the Peace, or to the Shirife: Or if any person haue stirred or procured any other to make such assemblie, 1. Mar. parl. 1. ca. 12: 1. El. ca. 17.

Lying in awaite.

If any haue lyen in awaite, to mayheme, or kill any other. Commission.

Forcible entries.

If anye haue entred into landes, or possessions

Lay causes.

sions with force, or entring peaciblye, haue holden the same with force, 8. H. 6. ca. 9.

Cut pond head, fishe: hunt Deere: take Hawkes, or their egges.

If any person haue vnlawfully broken, or destroyed the heade or damme of anye ponde, mote, stewe, or seuerall pitte wherein fishes are put by the owner therof: or haue wrongfully fished in any of the same, to the intente to take awaye the fishe againste the owners will: Or haue wrongfully entred into anye Parke or other grounde, before this Statute inclosed, or after this Statute, (by the licence of the Prince) to be inclosed and vsed for kéeping of Déere, and haue wrongfully hunted, driuen out, hurt or killed, anye Déere there: Or if any person haue vnlawfullye taken away any Hawke, or the egges of any Hawke out of the woodes or groundes of anye other person, 5. El. ca. 21.

Take Hawkes egges: take Hawkes, or driue them away.

If anye person haue taken, or caused to be taken, vppon his owne, or other mennes grounde, the Egges of anye Falcon, Goshawke, Lanner, or Swanne: or haue taken any Eirer Falcon, Goshawke, Tercell, Lanner, or Lanneret: or haue purposelye driuen them out of their Couertes: or haue borne any Hawke of the brééde of *Englande*, called a Niesse Goshawke, Tallet, Lanner, or Lanneret, 11. H. 7. ca. 17.

Niesse Hawk

If any Artificer, Labourer, or other Lay man

Lay causes.

Dogges, nets, firrets.

man, not hauing lands, or tenements of forty shillings by yeare, or anye spirituall person not aduanced to tenne poundes liuing by the yeare, haue kept greyhound, hound, or other dogge to hunte: or haue vsed firrets, nets, or other engines, to take or destroye, Deere, Hares, Conies, or other Gentlemans game. 13.R.2.cap.13.

Trace hare.

If any person haue traced, killed, and destroied any Hare, in the snowe 14.H.8.cap.10.

Take phesants, or partriches.

If any person whatsoeuer, haue taken, or killed, any phesants, or Partriches, with any maner of nette, or other deuise whatsoeuer, vpon the freehold of any other, without speciall licence, or in the night time, except it were vnwillingly, by lowbelling, or tramelling, who also did then & there presently lette them goe againe: Or if any person haue hawked, or with his Spaniels hunted in any ground (not being his owne) where anye corne or graine did then growe, or before it was shocked, or copped, without the consent of the owner of such corne or grayne. 11.H.7.cap. 17: & 23.Eliz.cap.10.

Hauking in corne.

Vsurie.

If any person haue by himselfe or anye other, sold any merchandizes or wares to any other, and haue within three monethes nexte after that, by hym selfe or by anye other bought the same, or any part thereof againe,

vpon

vppon a leſſer price, knowing them to be the ſame: Or if any perſon haue by any corrupt bargaine, mortgage, or other means, taken in gayne aboue the rate of ten poundes for the hundred, for one whole yeres forbearaunce, and ſo after that rate, for more or leſſe, 37.H. 8.ca.9: 13. El.ca.8. Lay cauſes.

If any haue within theſe two yeares forſtalled, regrated, or ingroſſed vnlawfully: Forſtallers. Regrators. Ingroſſers.

A Forſtaller is hee, that buyeth or cauſeth to bee bought, or maketh contract or promiſe for the hauing or buing of any victuall, or wares, comming by lande or water towardes any faire or market to be ſolde, or comming from beyonde the Sea towardes any Citie, Port, Hauen, Creeke, or Roade of this Realme to bee ſolde, before the ſame ſhall be in the Faire or Market, Citie, Port, or Hauen ready to be ſolde: Or that by any meanes maketh motion to any perſon for enhauncing the price of the ſame: Or that doeth diſſwade, moue, or ſtirre any perſon (comming to the Market or Faire) to forbeare to bring any of the ſame to any Faire, Market, Citie, Port, or Hauen to be ſolde. *Forſtaller.*

A Regrator is he, that regrateth or getteth into his poſſeſsion, in any Faire or Market, any Corne, Wine, fiſhe, butter, cheeſe, candles, tallow, ſheepe, lambes, calues, ſwine, pigges, geeſe, capons, hennes, chickens, pigeons, conies, or other deade victuall whatſoeuer, brought to any Faire or Market to be ſolde, and ſelleth the ſame agayne in any Faire or Market kepte there, or within foure miles thereof. *Regrator.*

An Ingroſſor is hee, that ingroſſeth or getteth into his handes by buying, contract, or promiſe, taking (other than by demiſe, leaſe, or graũt, of land or of tithe) graine, *Ingroſſor.*

Lay causes.

any corne growing in the fieldes, or other Corne or graine, butter, cheese, fishe, or other dead victuall, within *Englande* to the intent to sell the same againe. But such as buy barlye or oates (without forestalling) and turne the same into malte or oatemeale, and sell it againe: and such victuallers of all sortes, as buy victuall (without forstalling) and sell it by retaile agayne, and Badgers, and Drouers (being lawfully licenced and not abusing their licences) are excepted. So be all buiers of wines, oyles, spices, and other forrain victualls brought from beyonde Sea hither, except fishe and salte onlye, 6.Ed.6.ca.14: 5.Eli.ca.12: 13.Eli.ca.25.

Seede corne.

If anye person haue within these two yeares bought Corne in any Fayre or Market for chaunge of his sæde (hauing then sufficient for his house, & for sowing his grounde for a yeare) and did not bring thither (if hee mighte) so much as he did so buy, and did not the same day sell it after the price then going, 5.E.6.ca.14.

Liue cattell.

If any person haue within these two yeares bought Oxen, Konts, Steeres, Kyen, Heyfares, Calues, Sheepe, Lambes, Goates, or Kiddes, liuing, and solde any of the same againe aliue, before he hath kepte them fiue weekes, 5.E.6.ca.14.

Tanned Leather.

If anye person (not hauing the Queenes speciall licence) haue boughte or ingrossed tanned leather, to sell it agayne, vnlesse he bee an Artificer that maketh wares of suche tanned leather, and worketh it in the same, 5.E.6 cap.15:

ca.15 : 1.El.ca.9. Lay causes.

If anye person hath boughte anye woollen yarne, and haue not made cloth thereof, 8. H. 6.ca.5 Or haue boughte anye woll, but of the owner of the Sheepe, and of the Tithe, 14. R. 2.ca.4. Woollen yarne.

If any Butcher, or other person haue killed any yong suckling Calfe, to bee solde whole, or by retaile, which was calued betweene the first of Januarie, and the first of Maye, 24. Henri. 8. cap. 7 : 14. Elizab. ca. 11. Or haue killed any Weinling, Bullock, Steere, or Heifare (vnder the age of two yeares) to be solde whole or by retaile : *ibidem*. Or haue killed anye Calfe to sell, beeing vnder fiue weekes olde, 5. El. ca. 8. Sucking calues. Weinlings vnder 2. yeares. Calues vnder fiue weekes olde.

If any person haue willingly (betweene the first of Marche and last of June in any yeare) taken away, or destroyed the egges of anye wildfoule (vsed to be eaten) from the place where they did lay the, 25. H. 8. ca. 11 : 3. E. 6. c. 3. Egges of wildfoule.

If anye person (feeding aboue 120. share sheepe for the most part of the yeare, vpon his groundes that be meete for mylchkyen, and wherein no person hath any commune) haue not for euery 60. suche sheepe reared vp one calfe, during the time of keeping such sheepe: 2. & 3. Phil. & Mar. cap. 3 : 13. El. ca. 25. Or if any person (feeding vpon his seueral pastures Milche kyen and calues.

aboue

Lay causes.

aboue 20. oxen, rontes, stéeres, scrubs, heifares, or kyne) haue not for euerie tenne such beastes kept one Mylch Cow, and for euerie two kyne weaned and reared vp yearely one Calfe, except it chaunce to die. *ibid.* He that feedeth such shéepe or beastes, only to be spent in his is house excepted. *ibidem.*

Salmons.

If any person haue taken anye Salmons, betwéene the feastes of the Natiuitie of the blessed virgine Marie, and of S. Martine, in any riuers or waters: Or haue taken young Salmons at any Mil pole, or other place, betwéene the middest of Aprill and Midsomer; or haue at any time caste into any waters any nette, by which the Fry of any Fish may bée taken. W.2.cap.47:13.R.2.cap.19: 17.R.2. cap.9.

Frye of fisshe.

Frye of fish.

If any person haue with any net, or mean, taken and killed any frye or spawne of anye fishe, in any weare, fludgate, stream, or riuer, (salt, or freshe) or at the taile of any Mill: or haue taken there any Salmons, or Trouts, out of season, that is, being kippers, or shedders: Or haue taken and killed any pickerell vnder ten inches fishe in length, or Salmon vnder 16. inches, or Trout vnder 8. inches, or Barbell vnder 12. inches: or haue fished in any the saide places with any net, but such whereof euerie mesh was 2. inches and a half broad:

Salmons.
Trouts.

Assise of fishes.

Nettes.

broade: But Angling is excepted, and so is the taking of Smeltes, Loches, Minewes, Minheades, Gudgeons, and Eles, in places only where they haue bene vsed to be taken 1. Eli. cap. 17: 14. Eli. cap. 11. Lay causes. Angling.

If any Butcher, Fishmõger, Inholder, Tipler, Brewer, Baker, Poulter, or other seller of victuall, haue not solde the same at reasonable prices, and for moderate gaines, 23. E. ca 6: 13. R. 2. ca. 8. If any Beerebrewer, or Alebrewer haue sold their drinke at higher prices than haue bene appointed by the Iustices of Peace 23. H. 8. ca. 4. Victuallers prices reasonable. Brewers.

If anye Butchers, Bakers, Brewers, Poulters, Cookes, Fruterers, or anye mysterie of any of them, haue conspired, or taken any oath or promise, not to sel, but at prices certaine agreede betweene them 2. E. 6. 15. Victuallers conspiring.

If any Butcher haue sold, or offered to sell, Swines flesh mezeled, or any flesh that dyed of the morreine: Or if anye other Victualler haue solde, or offered to sell any corrupt or vnwholsome victuall, *Stat. Pistorum.* cap. 7. Corrupt victuall.

If anye person haue, against Proclamation thereof made, transported or carried out of this Realme, anye Corne, Graine, or Malte, growing or made here: or anye Transport Corne, Beere, Butter, Cheese, Seafish, Herring, Wood.

Lay cauſes.

Beere, Butter, Cheese, or Wood in any veſſel (except to *Barwik*, or the marches thereof) without ſufficiente auctoritie, or anye Seafiſh, or Herring not taken by a naturall borne Subiect here: or haue by any meanes conueyed, or willinglye conſented to conuey, anie of the ſaide thinges, to any veſſell being on the Sea, or in any place or Hauen of this Realme to be tranſported ouer Sea, or into *Scotlande*, without ſufficient auctoritie: or if any perſon hauing licence to conuey anye of the ſayde things, haue fraughted or laden his veſſell, or any part thereof, at any moe places than one onely: 1. & 2. Philip & Mar. cap. 5: 13. Elizabeth. cap. 11. & 13.

If anye perſon haue boughte (to ſell againe) any Butter or Cheese, vnleſſe it bee in open Faire or Market by retaylinge it after the weighe of Cheese and Barrell of Butter, or after a leſſe quantitie: or vnleſſe it be victualers for that which ſhal be retailed or ſpent in their houſes. 3. Ed. 6. cap. 21: & 14. E. ca. 11.

Fiſh packed. Bought of Strangers.

If anie perſon haue packed Fiſh in Barrells, and haue mixed the Countable Fiſhe with the ſmall Fiſhe. 2. Edwarde. 4 cap. 2. 11. H. 7. cap. 23. Or haue bought of a Straunger borne, or out of a Straungers bottome, any

Lay cauſes.

any Herring (other than ſuche as commeth hither by reaſon of Shipwracke) not ſufficiently ſalted, packed, and caſked 5. Elizabeth. cap. 5.

Rams, Sheepe, Lambes tranſported.

If any haue brought, ſente, or receyued into any Shippe or Bottome, anye Rammes, Sheepe, or Lambes, beeing aliue, to bee conueyed oute of the Queenes Dominions: or if any perſon haue procured the ſame 8. Eli. cap. 3.

Drying of fiſh brought by Straungers.

If any perſon haue dried in this realme, to bee ſolde, any Fiſhe taken or brought hither by anie Straunger borne. 13. Elizabeth. cap. 11.

Cods or Lings in Caske.

If any Straunger borne, haue brought into this Realme, anye Codds, or Lings, packed in Barrels, or other Caskes. 13. Eli. cap. 11.

Set price or taxe vpon Seafiſh.

If any perſon haue (within this yere) take vppon him to ſet price, to take toll, or to demaunde any tare vpon any Seafiſh take by any ſubiect of the Queene in their owne veſſelles: or if any Purueyour or other perſon haue within that time, by colour of anye Commiſſion taken anye ſuche Herring, or Seafiſh (other than the accuſtomed compoſition fiſhe for *Iſeland*) againſt the wil of the bringer in thereof: Or if any ſuche perſon haue (within that time) cauſed to bee laden

Purueyour.

Seafiſh and Herring.

Lay causes.

and caried in any vessel (wherof any stranger borne, is wholy or partly owner or Maister) any Fishe, victuall, or other thing, from one Port or Creeke of this Realme, to anye other of the same: Or if any person haue wythin that tyme brought into thys Realme, or any parte thereof, other than into the Ile of *Man*, or into *Wales*, any Wine comming out of the Dominions of *Fraunce*, or anye *Tholouse* Woad, but onelye in such vessell whereof some Subiect of the Queene was then owner, or parte owner 5. Elizab. cap. 5.

Wine or Woad in a strange bottome.

Wines retailed

If anye person auctorized to sell Wine by retaile, haue wythin this yeare sold the same aboue the prices thereof limited by the Queenes Proclamation 5. Elizabeth. cap. 5.

Not aboue ten Gallons of Wine.

If any person, not being the sonne of a Peere (or Barron) of this Realme, nor hauing landes or profites to the yearely value of one hundred markes, or goods to one thousande markes, haue kept in his house any vessel of *Gascon*, *Guion*, *French*, or *Rochel* Wine, containing aboue ten Gallons, to the intent to spend the same in his house 7. E. 6. ca. 5.

Eate flesh.

If anye person (other than by reason of age, sickenesse, childing, or licence) haue

haue within this yeare, eate flesh in Lent, or vppon anye fishe daye obserued by the custome of this Realme 2.Ed.6.cap.19:5.Eliza. cap.5. Lay causes.

If any person haue vpon any Wednesday (not falling in Christmasse weeke, or Easter weeke) eaten, other than of one dish or kinde of flesshe, for the which also he shall then haue eaten at his table three ful dishes of Sea fishe of three kindes, 5. Elizabeth. cap.5.

If anye common Brewer, Baker, or Tipler, haue broken the Assise of Breade, Beere, or Ale: And if anye Stewarde of *Leete*, or Officer in Market Towne, haue taken any fine for breach af the Assise of Bread or Ale, in suche cases, where corporall punishmente is appointed, 3. Ric.2. cap 9. Asisse of Bread and Ale.

If anye person haue boughte or solde by any vnlawfull weightes or measures: or if any person haue bought or solde in anye Citie, or market, with any weight or measure that is not lawfully marked or signed: 11.H.7.c.4 Or haue bought Corn by heaped measure, in any place (except within shippe borde) or haue vsed double measure, the one to buy, the other to sel with, 15.R.2.c.4:11.H. 7.cap.4:5.E.3. *de Pistor.* Weights and measures.

Lay causes.

Commune weights and measures.

If they of the Towne where the Kings Standerd is appointed to remain, haue not their common weightes and measures signed, or haue not thereby signed weightes and measures to all that haue required the same: And if the heade Officers of Market Towns, haue not twice yerely made view and examination of weights and measures there 11 H.7.ca.4.

Vessel for Ale, Beere.

If any vessel for Bëere or Ale haue bëene solde or put to sale, being made of vnseasonable wood, or not hauing thervpon ỹ mark of hym that made it: Or if any Barrell for Bëere, contayne not of the Quëenes standard 36. Gallons: the Kilderkin 18. Gallõs: the Ferkin nine Gallons: Euery Barrell of Ale 32. Gallons: the Kilderkin sixtëne Gallons, and euery Ferkin 8. Gallons: 23. H.8.cap.4.

Vessels for Wine, Hony, Oyle, Herring, Eles, Salmons.

If any haue made or brought into this Realme, any Tunne of Wine, not containing 252. Gallons: or Pipe not containing 126. Gallons: or Tertian not containing 84. Gallons: or Hogshead not containing 63. Gallons: or But of Malmesey not containing 126 Gallõs: Or Barrel of Herring not containing 32. Gallons of Wine measure: or Barrel of Eles not containing two & fortie Gallons: Or But of Salmon not cõtaining

ning 84. Gallons: or any Kilderkins, Tertian, Firkins, or Rundlets, but after the same rate 2.H.6.ca.11:22.E.4.ca.2: 1.R.3.ca.13: & 28.H.8.ca.14. Lay causes.

If any haue made any vessel of Sope, that being empty containeth not 32. Gallons for the Barrell: 16. for the half Barrell, & 8. for the Firkin: or weyeth aboue 26. *lb.* the barrel, 13. *lb.* the halfe Barrel, or 6. *lb* and a halfe the Firkin 23.H.8.ca.4. Vessels of Sope.

If any Millers haue taken toll by heaped measure 31.E.1. *de Pistor. & Braciat.* Toll Dish.

If any Artificers, Workemen, or Labourers, haue conspired, or promised togither, or made anye oaths, that they will not do their workes but at a certaine price or rate, or but at certaine tymes, or but a certaine worke in a day, or that one of them shal not take vpon him to finish that which an other hath begun 2.E.6.ca.15. Artificers conspyring.

If any Arrowhead Smith haue not wel boiled, brased, & hardened at the point with Steale, and marked with his marke, such heades of Arrowes and Quarrels, as hee hath made 7.H.4.ca.7. Arrowhead Smithes.

If any person (during such time as he vsed ỹ mysterie of Tanning of any Hide or skin of Ore, Steere, Bul, Cow, Calfe, red or fallow Deere, Goate, or Sheep) haue vsed also Tanners.

Lay causes.

the mysterie of a Shoomaker, Currior, Butcher, or of any Artificer vsing the cutting or worcking of such Leather.

If any person haue gashed or cut the Hide of any Bull, Ore, Steere, or Cow, whereby it is impaired: or if any Tanner haue put to sale any such Hide.

If any person (other than suche as at Michaelmasse 1559. had freeholde of fortie li. by the yere, or had then any Tanhouse, and did occupie tanning of Leather, or hath beene an Apprentise or taught as a hired seruãt seuen yeres to a Tanner, or hath beene wife to a Tanner, or the son of a Tanner, & brought vp foure yeares in that Arte, or the sonne or daughter of a Tanner, or such as hath married the wife or daughter of a Tanner that left to the same his Tanhouse and Fattes) hath tanned any leather, or hath taken any profite by the tanning thereof.

If aaye Tanner haue suffered anye Hide to lye in the Limes longer, than till the haire falleth off, or may bee taken off, or haue vsed any other, than Lime, Culuerdung, Hendung, colde Water, Wose of colde Water, and Okenbarke, in his tanning: or haue ouerlimed any Hides, in the Pittes, or putte them in Vesselles before the time bee perfectly wrought out, or haue suffe-

Lay causes.

ſuffered his Leather to bée frozen with the froſt, or to bée parched with the Fire, or the Sunne: Or haue tanned any rotten Hides, or wrought them negligētly in the Wole, or haue not renued the Wole ſo ofte as nede was: Or haue not ſuffered the Hides (for vtter ſoale and clout Leather) to lye in the Wole twelue moneths, and for the vpper Leathers nine monethes: Or hath not ſufficientlie tanned any Hide: Or hath tanned any hide of Ore, Stere, or Cow, otherwiſe than whole, and without cutting anye part therof away, except three or four Bends ouerthwart for clout Leather: Or haue tanned any Bull hide, Horſe hides, or Sheepe ſkin: Or haue put any of them to ſale, being tanned.

If any perſon haue putte to ſale any tanned Leather (red and vnwroughte) vnleſſe it be ſufficientlie tanned and dryed, and vnleſſe it be in the places appointed for it, in open Faires and Markets, and vnleſſe it be firſte ſearched and ſealed: Or haue departed with the hide of Ore, Stere, or Cowe, but onelye whole, without any parte cutte off, excepte Bendes for clouting Leather, as before.

If any perſon haue bought, contracted for, or beſpokē any rough hide, or Calues ſkins

Lay causes.

in the haire (except salte hides for the vse of ships) but suche persons onelie as shal tawe the same: or shall, & may, by this Acte, tanne the same: Or haue bought or bespoken anye tanned Leather, not wrought into made wares (other than neckes or shreds of Sadlers, or gyrdlers) but suche persons onelye as will conuert and worke the same into made wares 5. Elizab. ca. 8.

Curriours.

If any Currior haue curried any leather, but in his owne house, and that being in a Corporate or Market towne: Or haue curried any Leather not well tanned, or not throughely dried after his wette season: Or haue vsed in his wette season any deceitful meanes to corrupt the same: Or haue curried vtter sole leather with any other stuffe than hard tallow, or inner sole, or ouer leather with any salt stuffe: Or haue not liquored them both throughly: Or haue burned, scalded, or shauen to thin, or not wrought sufficientlie, any Leather: Or haue galled, or hurte anye Leather by anye meanes: Or haue refused to Currie wythin fiue dayes in Sommer, and ten dayes in Winter, well and sufficientlie, any Leather, by any cutter of Leather, or his seruaunt, bringing with him good stuffe for the perfecte liquoring of the same, 5. Eliz. 8.

If

Lay causes.

If anye Curriour haue (during the time that he hathe occupyed Currying) vsed the feate of a Tanner, Shoomaker, or Butcher, or other Artificer, vsing cutting of Leather, 5. Elizab. ca. 8.

Shoomaker.

If any Shoomaker haue made any Boots, Buskins, Shoes, Slippers, or Pantofles, or anye parte of them of Englishe Leather wette curried, (other than Deeres, Goates, or Calues skinnes, dressed like Spanishe Leather) but of Leather well tanned and curried, or well tanned onelie, and wel sewed with thrēde well twisted, wared, & rosined, and with the stitches harde drawen, with harde Leathers, and without mixing Neates or Calues Leather in the vpper Leathers thereof: Or haue putte in anye Bootes, Buskins, Startups, or Slippers (betweene the laste of September, and the twentith of Aprill) mēte for anye person aboue foure yeares olde, anye drie Englishe Leather (other thā Calues or Goats skins, dressed like Spanishe leather:) Or haue shewed for sale, anye of his wares vppon the Sondaye morning beefore diuine seruice bee ended: Or haue putte into anye of hys saide wares, leather made of Shæps skins, Bul, or horse hide, or into the vpper leather

of

Lay causes.

of any Shoes, Startups, Slippers, or Pantofles, or into the nether part of any Boots, (the inner soale and halfe of the Shoe, only excepted) anye parte of the wombe, necke, shanke, flanke, pol, or cheeke: Or into anye vtter soale, anye other than the beste of the Ore, or Steeres hide: or into the inner soale other than the wombes, neck, pol, or cheek: or in the treslwelles of the double soaled Shoes, other than the flanckes of the saide Hides, 5. Elizab. cap. 8.

Search and seale Leather.

If anye Lorde of Faire or Market, haue not appointed two or three honest and skilfull persons, to bee searchers and sealers of Leather there: And if any the searchers and sealers so appointed, haue refused to cut the wombs from the vtter soale Leather truely tanned, and before it be Curried: Or haue refused to seale good Leather: or made default in searche: Or not registred the bargaines for Leather, (taking due fees) or haue concealed anye faultes, 5. Elizab. cap. 8.

If any person haue denyed any such searcher to enter into any place, to searche tanned Leather, and wrought ware, or to seise and carrie away that whiche was insufficient: Or if any haue carried out of any Faire or Market, anye whole Ore or Steere hide

hide (wherof any soale Leather may be cut) before the wombs be cut off: Or haue putte awaye anie tanned Leather (redde and vnwrought) without registring the same, and the price therof: Or haue bought anye tanned Leather, before it was searched and sealed, or haue carried it out of anye Faire or Market before it was registred, 5. El. ca. 8. Lay causes.

If any Goldsmith, or worker of siluer, haue wrought any siluer, that is not so fine in allay as the Sterling, or haue not set his marke vpon his worke before he sette it to sale, 2. H. 6. ca. 14. And if any haue gilded any Sheathes, or anye mettal but siluer, sauing the Spurres of Knightes, and the apparell of a Baron, or suche as are aboue that estate, 8. H. 5. cap. 3. Goldsmiths and gilding.

If any Tilemaker, haue not digged and caste vp his earth, for Tile, til after the first of Nouember, or haue not stirred and turned it till after the firste of Februarie following, or if he haue wrought it before ỹ first of March following, or if he haue not wroughte and tried it from stones, beines, and chalke: Or if he haue made, or anye person haue put to sale, any plaine Tile vnder ten inches and a half in length, fiue inches and a quarter in breadth, and halfe an inch and a quarter in thickneſſe: Or anye rofe Tile vnder Tilemakers.

Lay causes. vnder thirteene inches in length, and halfe an inche and halfe a quarter in thicknesse, with conuenient deepenesse: or any Gutter Tile, vnder ten inches and a half in length, with conuenient thicknesse, breadth, and deapth: And if any searchers appointed for the ouersight of the true making of Tile, haue not done their effectuall indeuour and diligence in this behalfe 17.E.4.ca 4.

Waxe workers. If any person haue solde or sette forthe, Candels or other workes of Ware to sale, at higher price than after the rate of foure pence for the pound, ouer the common price of plaine Ware betweene Merchant & Merchant 11.H.6.cap.12.

Cloth making and Dying. If any Clothmaker haue not set his seale of lead to his Cloth, thereby declaring the iuste length thereof, to bee tryed by the Water.

If any person haue stretched any Cloth aboue one yerde and a half in length, or one quarter of a yard in breadth, or haue put to sale, anye cloth that hath shruncke more in the wetting than is aforesaide: Or haue stretched any narrow Streit or Kersey, aboue one yard in length, and half a quarter of a yard in breadth, or haue put any such to sale that haue shrunke more in the wetting 5.E.6.cap.2.

If

Lay causes.

If any Diar of wollen cloth, haue Died any browne Blewes, Pewkes, Tawneis, or Violets, that were not perfectlye boyled, greined, or Maddered vppon the Woade, and shot with good Coarke or Orchall sufficientlie.

If anye person haue Died any Woll for Cloth called Russets, Marbles, Grayes, Bayes, or suche like, or for Yats, or Caps, vnlesse it were perfectlie woaded, boiled, & maddered: Or haue Died with Brazell, to the intēt to make a false colour, in any such Cloth or Woll: Or haue put anye Flore, Chalke, Starch, or other deceiuable thing vpon any cloth, (except certaine Deuonshire and Cornwall straights 7. E. 6. cap. 9.) Or haue occupied any yron Cardes, or Picards, in rowing of any wollen cloth: Or haue solde any cloth by anye lesse measure than after the true contente thereof by the yarde and inch: Or haue put to sale in thys realme, any Cloth (being pressed) to bee occupied in *England, Wales* or *Ireland* 3. E. 6. c. 2.

If any Ouersæers of Cloth, appointed by the Iustices of Peace for this yere, haue refused to bee Ouersæers, or haue not within their charge, made due searche thereof once euerie quarter: And if any persō haue interrupted them to make such search, 3. E. 6. ca 2.

If

Lay causes. If any Kentish broadcloath (except course cloth onlie, not exceeding fiue pounds price) haue bin made, that contained not in length betweene 28. and 30. yardes, being wet: and in breadth seuen quarters within the liſtes: and in waight 76. poundes, being well scowred, thicked, milled, and fully dyed 5. E. 6. ca. 6: & 4. & 5. Phil. & Mar. cap. 5.

And so changing it after their rates for other countries, as by those Statutes appeareth.

For regrating of Woolles by *Halifaxe* men. See 2. & 3. *Phil. & Mar. cap.* 13.

Linnen Cloth. If any person haue vsed, or caused to be vsed, any racking, beating, or calking of any deceitfull liquor, or other meane, with any kind of linnen cloth, whereby the same became deceitfull, or the worse for the good vse thereof 1. Eliz. cap. 13.

Scites of Religious houses. If any owner of any Scite or Precincte, and demeasnes of anye late dissolued religious house (that was in yearely value vnder two hundred pounds,) doe not keepe an honest and continual hoshoulde therevppon, and do not occupie so muche of the saide demeasnes in tillage, as was occupied by the space of twentie yeares, before the seauen and twentith yeare of King Henrie the eight, 5. Eliz. cap. 2: 14 Elizab. cap. 1.

If any person hauing in his hands fortie acres

Lay causes.

acres of arable and paſture togither, or of the one ſorte alone, apt for tillage, haue not within this yeare tilled and ſowen ſeaſonablie (wythout fraude) one Acre of lande with Flaxe ſæde, or Hemp ſæde, or both. Flaxe and Hempe.

But ground in a Parke for Deere, and Wood lande, Groue, Meadow, Fell Fenne, Saltmarſh, Heath, Common groundes vnapte for tillage, groundes not tilled wythin fiftie yeares before this Statute, and groundes plowed onely for clenſing of it, ſhal not be accompted in theſe ſixtie Acres, 24. H. 8. cap. 4: & 5. Elizab. cap 5.

2000. Sheepe.

If anye perſon haue at one time kepte aboue the number of 2000. ſhéepe of al ſorts, againſt the purporte of the Statute 25. H. 8. cap. 13.

Faire and Market for horſes.

If any owner, Officer, or Ruler of anye Faire or Market, haue not appointed one certaine open place there, for the ſale of horſes, geldings, mares, and coltes, and one ſufficient perſon to take toll, and kéepe the ſaide place: And if any ſuch Toll gatherer, or his Deputie haue taken any more than one peny toll for one contract, or for entring the names of the parties, & that in the ſame place onelie, and betwéene ten of the clocke in the morning, and Sunne ſetting 2. & 3. Phil. & Mar. 7.

Inholder.

If anye Inholder (dwelling in any Citie,

Lay causes.

Towne, Corporate, or Market Towne, wherein is any common Baker that hathe bene apprentice there seuen yeares) haue within his owne house made anye horse-breade: or (dwelling in any other thorowfaire) haue made it insufficientlie, and not of due assise 13. Ric. 2. cap. 8: & 32. Henr. 8. cap. 41.

Horsebread.

Hay and Oates.

If anye Inholder haue taken any thing for litter: or haue taken excessiuelye for Haye, or haue taken aboue one halfe penny in a bushell of Oates, ouer the common price in the Market 13. Rich. 2. cap. 8: & 4. H. 4. cap. 25.

Seruants not retainable for lesse than one yeare.

If anye person haue bene retained into seruice to worke for anye lesse time than a whole yeare, in any the Artes of a Clothier, wollen Weauer, Tucker, Fuller, Clothe-worker, Sherman, Dier, Hosier, Tayler, Shoemaker, Tanner, Pewterer, Baker, Brewer, Glouer, Cutler, Smith, Ferrour, Curriour, Sadler, Spurrier, Turner, Capper, Hatmaker, Feltmaker, Bowier, Fletcher, Arrowhead maker, Butcher, Cooke, or Miller. And if any person being vnmarried (or vnder thirtie yeares of age, and married) and beeing compellable to serue in any of those Artes, haue refused to serue.

Refusing to serue.

If

Lay causes.

If anye person beeing betweene the age of twelue yeares and threescore, and beeing compellable to serue in Husbandrie, haue refused to serue in Husbandrie after request thereof made by anye person keeping husbandrie: And if any person haue giuen any wages, contrarie to the rates of wages of seruauntes and labourers appointed and proclaymed.

Greater wages.

Testimonial.

If any person retained in Husbandrie, or anye the saide Artes, haue after his reteynour expired, departed out of one limitte, Towne, or Parishe, into an other, wythout a Testimoniall: And if anye person haue accepted into his seruice, anye so departing without shewing suche Testimoniall.

Put away, or depart away.

If any person haue put away his seruant before the ende of his terme, without reasonable and allowed cause before a Iustice of the Peace, or at the ende of his tearme, without a quarters warning before giuen: And if anye seruant haue departed without such cause before the ende of the terme, or at the ende thereof, without such warning giuen before two lawful witnesses.

Vndertake worke, and not finish it.

If any Artificer, or labourer, hyred by the daye or weeke, haue not continued at hys worke so manye houres in the daye as hee

Lay causes.

ought: Or taking any worke by the greate, haue vnlawfullye departed before the finishing therof.

Assault Master or Dame.

If any seruant, workeman, or labourer haue wilfullie & malitiouslie made any assault or affray vpon his Maister, or Dame, or other person hauing the charge of suche workers or worke.

Labour in Hay time and Harueſt.

If any Constable, or head Officer, haue not vpon complaint put into the stocks two daies and one night euerie Artificer or person, meete to labour, that hath refused to labour in Hay time or Harueſt, for the getting or carrying of Corne, Hay, or Graine, beeing thereto appointed by a Justice of Peace, or suche Constable, or head Officer.

Apprentices.

If any person haue taken anye Apprentice against the order of the Law: and if any person haue exercised any Arte, not beeing brought vp therein as an Apprentice seauen yeares 5. Elizab. ca 4. & 5.

Poore.

Touching the abyding places and collections for the poore, there is no general order taken in the Shire of *Kent*. 14. Eliz. cap. 5.

Prisoners releeued.

If the Churchewardens of any Parish haue not euerie Sonday leuied the money for relieſe of the prisoners in the Gaole, and

Lay cauſes.

and once in euerie Quarter paide it to the Conſtable of the Hundred : Or if that Conſtable haue not at euerie Quarter Seſſions paide ouer the ſame to the Collectour thereto appointed : Or if ſuche Collectour haue not weekely diſtributed the ſame for reliefe of the ſaide priſoners 14. Elizab. cap.5.

Poore ſet to worke.

As touching ſtockes and ſtore of, &c. for the working poore, or houſes of correction for the idle poore, &c. little is done in this Shire as yet, but for the moſte parte left to the Pariſhes 18. Eliz. ca.3.

Cappes.

If any perſon aboue ſixe yeres of age (except Maydens, Ladies, Gentlewomen, Nobles, Knights, Gentlemē of twentie marks by yeare in lands, and their heirs, and ſuch as haue borne Office of Worſhip) haue not worne vpon the Sunday and Holidaye (except it bee in the time of his trauaile out of the Citie, Towne, or Hamlet where hee dwelleth) vpon his head, one Cap of Wool, knit, thicked, and dreſſed in *Englad*, and onlie dreſſed and finiſhed by ſome of the trade of Cappers 13. Eliz. ca.20.

Silke in apparel.

If anye man, borne within the Queenes dominions (except it be the ſonne and heire apparant of a Knight, or the ſonne of one of higher degree, or ſuche as maye diſpende

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twentie poundes by yeare, in landes, offices, fées, or other yerely reuenues for terme of life, or bee worth two hundreth poundes in goodes, or haue beene head Officer in any Citie, Borroughe, or Towne Corporate, or be the Queenes seruant in ordinarie, and wearing hir Liuerie) haue worne any maner of Silke, in, or vpon his Hat, Bonet, Nightcap, Girdle, Scabbard, Hose, Shoes, or Spurre leathers: And if any person knowing anie seruant of his to offende herein, haue not (within foureteene dayes nexte after such knowledge) put him out of seruice, if he were no Apprentice or hyred seruant, and if he were, then if he haue not put hym away at the ende of his terme, or if, hauing put him away therefore, he haue retained him againe within one yere next after that offence 1.& 2.Phil.& Mar.cap.2.

The Statute of Apparell (made 24.H.8 cap.13) is not thought altogither meete for this time, as it maye appeare by some Proclamations published.

Bridges.

If any Bridges in the highwayes (being oute of the Cinque Portes, and members thereof) bee broken or decayed, to the annoyance of Passengers: and if yea, then what Hundred, Citie, Towne, Parishe, or person certaine, or bodie politique, ought of right

right to repaire or amend the ſame 22. Hen. 8. cap. 5. Lay cauſes.

If the Conſtables and Churchwardens of anye Pariſhe, haue not in Eaſter weeke called their Pariſhioners togither, and appointed ouerſeers of the worke for amendment of the highe wayes, leading to anye Market, or haue not appointed the ſixe dayes for that worke: and if any ſuch ouerſeers, haue refuſed that charge. And if anye perſon (hauing a Plowe lande in tillage or paſture, or keeping a draughte or Plowe) haue not founde one Waine or Cart, furniſhed to worke eighte houres, euerie of the ſayde dayes: Or if anie other perſon (beeing aſſeſſed in Subſedie to fiue pounds in goods, or fortie ſhillings in landes) haue not likewiſe found two able men: Or if anye other houſholder, or Cotager, haue not by hymſelfe, or an other, ſo wrought euerie of the ſame dayes. Highwaies.

If the Hedges, Ditches, Trees, and Buſhes, in, and on eache ſide of anye ſuche high way bee not kepte lowe, ſcoured, and cutte down by the owners of the grounds adioyning: If any ſuch ouerſeer, haue not within one moneth after anye of the ſaide offences done, preſented the ſame to the nexte Iuſtice of the Peace: And if any perſon occu-

Lay causes.

pying land adioining to any such high way, haue cast the scowring of any ditche thereof into the high way.

If any Ouerseers, Constables, or Churchwardens, haue not leuied the forfeitures for the offences aforesaide, and employed them vpon their saide highwayes, and accounted thereof 4. & 3. Phil. & Mar. cap. 8: 5. Eliz. cap. 13: 18. Eliz. cap. 9.

Vnlawful games.

If anye person haue (for lucre) maintained, or kepte anye common house, Alley, or place of bowling, coyting, closhe, cailes, tennis, dicing, tables, carding, shouegroate, or anye other game prohibited by any former Statute (as foteball, and casting of the stone) or anye other vnlawfull newe game nowe inuented: If any Artificer of any occupation, or any husbandman, Apprētice, Labourer, seruant at Husbandrie, Journeyman, or any seruant of Artificer, or anye Mariner, Fisherman, Waterman, or Seruingman (other than of a Noble man, or of him that may dispend one hundred pounds by yeare, playing within the precinct of his Maisters house) haue played oute of the Christmasse at anye of the sayde vnlawful games, or in the Christmasse oute of the house or presence of their Maister 33. Hen. 8. ca. 9: & *vide* 12. Ric. 2. ca. 7. 8. 10.

If

Lay causes. Crossebowes and Gunnes.

If any person haue shot in, vsed, or kepte, any Handgun, but such as is in stocke, and Gun one yard long: or any Hagbut, or Demihake, not being three quarters of a yarde long.

If any person (not hauing one hundreth poundes reuenue by the yeare) haue carried in his iourney anye Crossebowe bente, or Gun charged, vnlesse it be to the Musters: If anye person haue shotte at large (other than at a Butte, or Banke of earth in place conuenient) at any thing with any Gunne, in any Citie, Borough, or Market Towne, or within a quarter of a mile of any of thē, or haue commaunded his seruaunt to shote in Crossebowe or Gun, at any thing (other than a Butte, or Banke of earth) Or if any person (not hauing a hundred poundes by yeare, or not dwelling within fiue myles of the Sea coaste, or not dwelling in a house two furlongs distant from any Citie, Borough, or Towne,) doe kepe or haue in his house, any Crossebow 33.H.8.c.6. If any person (hauing a hundreth poundes by yeare, and hauing seised any Crossebowe or Gun by vertue of this Acte) haue not broken the same in peeces within 20. dayes nexte after such seisure: *ibid.*

If any Merchaunt Straunger, beyng of

Lay causes.

anye Countrie from whence Bowestaues haue bene sente into this Lande, haue not (for euerie Tun weight of burden that hys vessell containeth) brought hither foure Bowestaues 12.E.4.cap.1:13:H.8.ca.10:& 37. H.8.ca 7. and for euerie Butte of Malmesie tenne Bowestaues 1.R.3.ca.11.

Archerie.

If any man being the Quænes Subiect, and not hauing reasonable cause or impediment, and being within the age of sixtie yeares (except spirituall men, Iustices of the one Bench or other, Iustices of Assise, & Barons of ỹ Eschequer) haue not a long Bow and Arrowes readie in his house, or haue not vsed shooting therein: or haue not for euerie man childe in his house (betweene seuen yeres and seuentéen of age) a Bow and two Shaftes, & for euerie such being aboue seuentéene yeares, a Bow and four Shafts, or haue not brought them vp in Shooting: If anye manne, vnder the age of foure and twentie yeres, haue shot at standing pricks: or (being aboue that age) haue shotte at any marke vnder eleuen score yardes with anye Prickshaft, or Flight.

Buttes.

If the Inhabitants of any towne haue not made and continued their Buttes as they ought to do.

Bowiers.

If any Bowier, haue not for euery Bow that

that he made of Ewe, made also foure other Bowes of apt wood to shote in: Or haue not solde his Bowes for all ages, at their due prices: If any stranger borne, not being a Denizein, haue vsed to shote in a lōg bow, without the Quænes licence: Or haue conueyed out of hir Maiesties dominions, any long Bow or Shafts, without such licence, 33.H.8.ca.9. Lay causes.

If any tempozal person, hauing estate for life in fræholde landes, or tenements, to the value of 200. *lb* by yere, or vnder, and not aboue 400. *lb*. Or (not being other wise charged) and hauing fees, annuities, or copyhold lands, for life to the value of 30. *lb* or aboue, or hauing goods to the value of 10. *lb* or vpwarde, haue not, & kæpe not in a readinesse, such Horsses, Geldings, Weapon, armour, or other furniture for the wars, as after the propozion of his abilitie he oughte (by the Statute therof made) to haue and kæpe: 4. & 5. Phil. & Mar. ca. 2. Armour.

If any tempozall person of ful age (whose wife not being diuozced, nor willingly absenting hir selfe from him, dothe weare any Gown or Peticoate of silke, or any Veluet in hir Kirtle, or in any lyning or part of her Gown (other than in Cuffes, or Purfles) or any Frenchhode or Bonet of Veluet with any Horsses for apparel.

Lay causes.

any habilimēt, paſte, or edge of gold, pearle, or ſtone, or any chaine of golde aboute hir neck, or vpō any hir apparel) haue not foūde and kept a light Horſe furniſhed, except he haue bene otherwiſe charged by the Statute to finde Horſſe, or Gelding, 33.H.8.ca.5. 4.& 5. Phil.& Mar. cap.2.

Commune armour.

If the Inhabitauntes of anye Pariſhe, Town, or Borough, haue not, or keepe not, ſuch common armour and furniture for the warres, as hath bene appointed for them by the Commiſſioners thereto aſſigned, 4.& 5. Phil.& Mar.cap.2.

Muſters.

If any perſon being generally or ſpecially commaunded to Muſter before anye (hauing auctorītie for the ſame) haue without true and reaſonable cauſe abſented hym ſelf, or haue not brought with him in a readineſſe, his beſt furniture of array & armor for his owne perſon.

Captaines.

If any perſon (authorized to Muſter, or to leuie men, for the Quēnes ſeruice in warre) haue taken anye reward for the diſcharge or ſparing of anye perſon from that ſeruice: Or if anye perſon hauyng charge of menne for warrefare, haue not paide to his ſouldiours their whole wages, conduict and cote money, or haue for anye gaine licenced any of them to departe oute

of

Lay cauſes.

of the ſeruice 4. & 5. Phil. & Mar. ca. 3.

Souldiours.

If anye ſouldiour ſeruing the Quéene in hir warres, haue giuen awaye, wilfullye purloyned, or putte awaye any Horſſe, Gelding, Mare, or Harneſſe, wherewith he was ſet forth, 2. & 3. E. 6. cap. 2: 4. & 5. Phil. & Mar. ca. 3.

Conuey horſſes, &c.

If anye perſon haue conueyed, ſolde, or giuen into any place beyond the Sea, out of the Quéenes Dominions, or to anye Scottiſhman, to bée conueyed into *Scotlande* anye Horſſe, Gelding (or Mare aboue tenne ſhillings price) without the Queenes licence vnder hir greate Seale, or priuie Signet, vnleſſe it were to ſerue the Quéene in hir warres 1. E. 6. ca. 5.

Horſſes and Mares for breede.

If anye perſon haue putte to fede in anye Foreſt, Chace, Myre, Mariſhe, Heathe, Common, or waſte grounde, within this ſhire, where any Mares are vſed to be kept, any ſtoned Horſſe, being aboue two yeares olde, and not being foureténe handfulles highe, betwéene the loweſt parte of the hoofe, and the toppe of the wyther: If anye ſuch Forreſt, or groundes, haue not bæne yerely driuen within 15 dayes after Michaelmaſſe by the owners, or officers thereto appointed, 32. H. 8. ca. 13.

If

Lay causes.

Sea watch.

If watches haue not bene made vpon the Sea coastes in suche places, and with suche number of people, and in such manner as it was wont to bee 5.H.4.ca.3.

Parliament.

The Statutes of leuying the wages of the Knightes of the Parliamente (made 23.Hen.6.cap.11.) haue no great vse.

Note also, that these Statutes folowing, are to be openly published at any *Sessions* of the Peace, *viz.*

Purueyours.

The Statutes (36.E.3.ca.2.3.& 4.) shall bee proclaimed by the *Iustices* of Peace euerie yeare, and thereof to enforme the people 23.H.6.cap.2.

Victualers.

Al former statutes for victualers being in force shal bee proclaimed two times yerely, in the *Sessions* of *Iustices* of the Peace 23.H.6.ca.13.

Archerie.

The Acte for *Archerie* (33.H.8.ca.9.) muste be proclaymed at the seuerall *Sessions* of the Peace.

Of

Of the Enditementes, and Presentments, giuen by the *Iurours*: and of the Matter and forme, and receiuing, and reiecting of them.

CAP. V.

THe preparatiō to this Enquirie thus made, let vs also loke vpon the performaunce of the same.

The vnderstanding (or knowledge) whiche the Iustices of the Peace do take by the trauel of these Enquirors, is by the meane of their report, put in writing, and commonly called, an Enditement or Presentment: betweēn the whiche two words (howsoeuer they bee confounded in common speeche) mee thinketh, that there doeth easilye appeare a certayne difference. For I take a Presentment to be, a meere denuntiation of the Iurours themselues or of some other Officer (as you shall hereafter heare) without anye other information: and an Enditemente to bee, the Presentment. Enditement.

the Verdite of the Iurours, grounded vpon the accusation of a thirde person: So that a Presentment is but a declaration of the Iurours (or Officers) without any bill offered before: & an Enditement is their finding of a Bil of accusation to bee true.

The one seemeth to come of the Greeke Ἐνδείκνυμι, I accuse: the other of the Frenche *Presenter*, to offer vnto a man, or to set before him.

But (takyng them as others doe) lette vs consulte wyth M. Marrowe and others, that we maye learne of them what things bee requisite to make a good Enditement.

Iustices of the Peace muste looke vpon Enditement.

For the Iustices of Peace ought to haue an eye vpon the Enditements taken before them, and therefore they vse to demaunde, that the Enquest shall take no Billes, but suche as the Iustices themselues haue firste perused: Howbeit, if the Enquest do the contrarie, it is good ynoughe, so long as theyr billes do carry sufficient forme and matter with them.

And if the billes doe wante forme onely, the Iustices maye sende for the Presentours, and cause thē to reforme them at anye time beefore they be remoued into the Kynges Bench, Stanf. 97. And therevpon it is sayde

(35.

35.H.6.14: & 12.E.4.18.) that if a bill of Enditement bée deliuered to a Iustice of the Peace, at (or before) the Sessions, which he promiseth to read, and to deliuer to the Iury, and doeth it accordingly, yet he shall not bée punished for it, in a Writte of Conspiracie: But it may be thereupon doubted, whether he should be so charged or no, if (vppon former communication had, and request made) he himselfe did draw and write the bill: and therefore the safest waye is, to suffer the Clearke of the Peace, or some other Minister of the Court, to drawe and frame it. But to the matter,

First, this is general, that all Billes, Informations and Enditementes grounded vpon penall Statutes, wherein the Prince only is to reape the forfaiture, ought to be commenced within foure yeres next after the offence committed: and if the suite be giuen to anye other person, for himselfe and the Prince, or for himselfe onely, that ought to commence (for the Prince) within two yeares, and (for euerye common person) within one yeare, next after the offence done: And otherwise it is méerely voyde: vnlesse it bée otherwise limitted by that speciall Statute vpon whiche the Information, Enditemente (or Presentment) is made and framed, 7 H.8 ca.3 And if

&c. many

many be ioyntly endited in one Enditement, yet are they also eache one severally endited thereby, 6.E.4.5.Markam.

Secondly, all Enditements, for as muche as they bée in the nature of a declaration, ought to conteine certaintie, and therefore (as sayth M.Marrow) fiue principall thinges (bée moste commonlye) requisite in presentmentes before the Iustices of Peace. (*videlicet.*)

1. The name, surname, and addition of the partie endited:

2. The yeare, day, and place, in which the offence was done:

3. The name of the person to whome the offence was done:

4. The name and value of the thing in which the offence was committed:

5. The manner of the fact, and the nature of the offence: as the manner of the treason, murder, felonie, or trespasse.

The name and surname.

The name and surname of the partie endited must be certainly expressed: and if the Enditement bée of an Accessarie in felonie, the name of the principall must be set downe also. For if the Enditement bée, *quod* A. *mandauit cuidam ignoto occidere* B. *id quod fecit*, this is vicious: but in treasõ, trespasse, or maihem, where all bée principals, it maye bée, *quod procu-*

procurauit personas ignotas, to doe the treason, trespasse, or maihem. Marr.

Besides the name and surname of the partie endited, there oughte also (by the Statute) (1.H.5.ca.5.) in euerye presentmente wherein processe of vtlawrie lyeth, to bee added, his estate, degree, or misterie, and the Countie, Towne, Hamlet, or Place, where hee is, or was conuersant. And euen so ought it to haue bene at the communs law also, as touching names of dignitie, made by creation, as Duke, Marques, Earle, Vicount, Archbishop, Bishop, Knight, or Serieant at the lawe, bicause euerye of these titles were accompted percell of the name: But it was not so, for the names of Baron, Banneret, and Esquier, (which are but names of dignitie without creation,) nor for Chauncelor, Tralorer, Chamberlaine, Shirife, Coronor, Eschetor, Baylife, Deane, Archdeacon, Deacon, Prebendarie, or Person (which are names of dignitie by reason of office onelye) vnlesse the presentment did charge them in respecte of their offices, for then the name of office also as Bailie or Escheator, oughte to be vsed in the Enditement. Mar. Addition of estate, degree. &c.

But now, Barõ, Knight, Esquier, Gẽtlemã, Alderman, Widow, Single woman, Deane, Archdeacon, Person, Doctor, Clerke, are good Degree or mysterie.

Additions of estate or degrée, (as I take it) within the meaning of this Statute of Additions: But Seruant, Butler, or Chamberlaine are not, because they bée commune to gentlemen, and yeomen, and thereby vncertaine. So, Merchant, Grocer, Mercer, Taylor, Broker, Husbandeman, Hosteler, Labourer, Lighterman, Waterman. &c. bée good Additions of mysterie: But Citizen is not, because it is no mysterie, arte, or degrée: Neyther is Maintainer, Vagabounde, Hereticke, Dicear, Carder, or such like, any good addition, because they are euery one euil, & against the lawe.

Place. Also by the sayd Statute, (as I sayde) the Addition ought to comprehend the Countie, and the Towne, Hamlet, or place (knowne out of any Towne, or Hamlet) whereof the partie is, or was: So that if there be diuers Hamlets in one Towne, he may be named of the Towne, or Hamlet: But if he be named of a place known, and the place be within a Towne, then he must bée named of the Towne, 35. H. 6. 30. And if the Towne and the Parish, beare both one name, he maye be named of the one, or of the other of them: But if there bée two Towns in one Parish, then he ought to be named of the Towne, and not of the Parish, 5. E. 4. 129: & 22. E. 4. 2.

As

As for the *Alias Dictus*, (whiche is often put in the Addition) the vse therof is chiefly in Writtes grounded vppon especialties, and to make the writte and the writing to agree. For (as touching Enditementes) if the partie be not well named, both for his name of Baptisme, Surname, Mysterie, or degree, and place, at the first, then can not the *Alias Dictus* make that good which was euil before, Mar. *Alias dictus.*

And it appeareth (1. E. 4. 2: & 2. E. 4. 1. 6.) that the Addition of the degree or mysterie must alwayes be such as the partie hath at the very time: But the Addition of the place may be of such, where he was at any time before, so that then the worde *nuper* be vsed there.

Furthermore, the Enditement must contayne the daye, yeare, and place, in which the offence was committed. 8. E. 5. 8: 2. H 7. 7: 25. E. 3. 43 And therefore if the Enditement suppose it the tenth day of Marche, without anye more, that is not good: But if it bee, the tenth day of Marche last past, without shewing in what yeare, that is good ynough: for the certaintie maye be founde out by the Stile of the Sessions. So if it bee the tenthe daye from Easter. Anno 23. Elizab. that is good: Lykewyse if it be in the Vtas of the holye The yeare, day, and place.

Trinitie: and it shall bée there vnderstoode to bée the verye daye of the Vtas (*videlicet*) the eight day after the feast, and not *quarto die* after the Vtas: But if it bée *in festo Sancti Petri*, it is not good, because there bée diuers Feastes of Sainct Peter, and none without addition, sayth, 3 H.7. Fitz. Enditements. 22.

If it bée *Anno Domini millesimo quingentesimo octuagesimo primo*, the yeare shall bée accoumpted after the computation of the Church of *Englande*, and not of *Rome*, or other Countries abroade. If the offence be done in the nighte before midnighte, the Enditemente shall suppose it to bee done in the daye before, and if it happen after midnighte, then it muste laye it to bée done the daye after. If it bée *in festo* of anye Sainct, it shall be construed to bée in the verye daye of the feaste, and not in the Eue. But if the presentment bée in the Negatiue, or in the affirmatiue rising vppon a Negatiue, as that A. hath not scowred suche a Sewer, or that by the not scouring thereof suche Meadowes be drowned, in these cases there néedeth no yeare nor daye. Marrow.

Place. And not onely this certayntie of the time, but that of the Place also muste bée conteyned

ned in the Enditemente, for it was adiudged(25.E.3.43) that a man shoulde not bée put to aunswere to an Enditemente of killing the Kinges Déere, because there was no place named, in which the offence was done: So an Enditemente supposing a felonie to bée done in suche a place of such a Countie, where in truth there is no suche place in that Countie, is méerelye voyde by the Statutes, 9.Hen.5.cap.1: & 18. Henri.6. cap.12.

If a man being stricken in Midlesex, had dyed thereof in *Essex*, the Bookes, 3.H.7.12: 4.H 7.18: 6.H.7.10: 7.Hen.7.8: 10.Hen.7.28: & 11.H.4.&c. did not agrée, in whiche of these Counties he should be endited. But the Statute (2.& 3.E.6.ca.24.) taketh order, that if the stroake (or poysoning) happen to bée in one Countie, and the death in an other Countie, the Enditemente in the Countie where the death is, shall bée good: and likewise, that if a murder, or felonie, bée done in one Countie, and a man becommeth Accessarie thereto in an other Countie, the Enditement agaynste the Accessarie shall bée good in that Countie wherein he becommeth Accessarie.

Where (by the waye) you maye sée in playne wordes of this laste Statute, that Iu-

Cc.iiij. stices

stices of the Peace may take Enditementes of Murder, as of Murder, though M. Fitzh. (Fol.17.) denye it, saying, that they cannot enquire of Murder saue only as of Felonie, or Manslaughter.

And you shall reade of an Enditement of Murder (before them) receiued 3.H.7 5. agreable wherunto was the opinion of Hales and Portman, Justices, as I haue seene in a Report of Dalison Justice.

The name of the person to whome the offence was done.

The certaintie of the name of the person, to whome the offence is done, is also in most cases requisite.

And therefore, if the presentmente be, *quod bona & catalla cuiusdam ignoti cepit vi & armis*, or *quendam ignotum depredavit*, it is not good for the uncertaintie, yet if *Felonice* be added, then it is in both the cases a good Enditement of Felonie, because of the Kinges aduauntage of forfayture thereby.

You maye see an Enditemente (Fitzh. Endit. 9.) *quod* A. *verberauit, & 20. Iaccos prais, &c.* was thought sufficiente, without shewing to whome the Iackes did belong: whereat Maister Stanforde (Fol.95.) maruayleth, saying that he sawe no cause why it shoulde be good, vnlesse it were for that the matter could not be made more certayne. But peraduen-

aduenture certaintie in Enditementes, was not in those daies thought so needeful, as now it is holden.

If the goodes of a Parson of a Churche bee taken, the Enditement must be, *bona rectoris*, and not *Ecclesiæ*. And if the goods of ỹ Church, then *Bona Parochianorum*, and not *Ecclesiæ*: If they be the goods of a Maior and Communalty, and the Maior dieth before the Enditement, then it shall be *bona communitatis*, sayth Mar. but enquire of it, because they haue no such name of Corporation.

If the Enditement be, *quod A. verberauit B. & vnum equum prætij* 20. *solid. felonicè cepit*, and doth not say, *ipsius B.* yet it is good inough: 30.H.6.Fitzh.Endit.9: But if it be, *quod vnũ equum prædicti I. cepit*, and there were no mention of I. before, then it is voyde 9.E.4.1.

If the goods of a man be taken, and he maketh his Executors, and dyeth, the Enditement shal be, *bona testatoris*: but if they were taken after his death, it shall be, *bona testatoris in custodia Executorum existentia*. If the Enditement be, *quod* A. *furatus est tunicam hominis ignoti, quem inuenit mortuum*, that is not good, 11.R.2.Fitz.Endit.15. If a man take away a coate Armour, which hangeth ouer a Tombe in a Church, the Enditemente shall say, *bona executoris* of him whose Tombe it

is: but if a graue Stone be taken awaye, the Enditement shall be, *bona Ecclesiæ*: Marr. If my goods be taken by a Tresspassor, and another taketh them from him, the Enditement shall be, *bona* of him which hadde the last possion. But if I bayle goods to one, from whom they be robbed, then it shall be, *bona* of me in his keeping Marr. If an Enditement be, *bona Capellæ in custodia, &c.* or *bona Domus*, or *Ecclesiæ tempore vacationis*. it is good 7.E.4.14.

The name and value of the thing.

The name (& value) of the thing in which the offence is committed, oughte also to be comprised in the Enditement: for an Enditement of the taking *bona & catalla*, whether it be in Tresspasse or Felonie, is not good, for the vncertaintie what goods they be: And if it be of dead things, it may be *bona & catalla* expressing the names thereof in certaynetye: But if it be of thinges liuing, it shall not say, *bona & catalla*, but *equum, bouem, ouem, &c.*

Agayne, the value (or price) of the thing is commonly to be declared: in Felony, to make it appeare from petit Larcinie: and in Tresspasse, to aggrauate the faulte and fine: But yet an Enditement of the taking of Beastes *feræ naturæ*, as dëere, hares, partridges, or phesantes, is not good, vnlesse they be taken in a Parke, or Warrein, that be liberties, 8.E.4.

5.

5. So of Charters, because their value cannot be esteemed.

In all cases (sayth M. Marrow) where the number oughte to be expressed in the Enditement, there also it must be sayde, *Pratij*, or *ad valentiam*: as if it be of the taking of Doues, in a douehouse, or yong Hawkes in a Wood: And where it is of a liue thing, or thinges, it must be *pratij*: and so of a deade thing in the singular number: but if it be of deade thinges in the plurall number, then it must be *ad valentiam* and not *pratij*. Agayne, if it bee of a deade thing that goeth by weighte, or measure, the forme is to saye *praty*, and not *ad valentiam*. *Pratij*, and not *ad valentiam*. &c.

If the Enditemente be of taking awaye Coyne, which is not currant, it shall saye, *pratij*: otherwyse it is of money currante, because that carrieth his value and price with it. If it be *quod proditorie fecit grossos, vel denarios*, it shall be, *ad valentiam*, and it shall not say, 20. *libras in denarijs*, or *in pecunia Domini Regis*, but *ad instar pecuniæ Domini Regis*. Mar.

Sundry other dainty and nice differences doth M. Marrow make, where a man shal say *pratij*, and where *ad valentiam*, binding the Enditement to that rule whiche the Register taketh for originall Writs of Trespasse: But for

or as much as Nele (9.E.4.26) sayeth, that Enditementes be not tied to that forme, and because that rule of the Register is not verye constantly observed in Trespasse it selfe (as a thing not materiall, in the opinyon of Ma: Fitzher. in his Nat.Br.Fol.88.) I thoughte it best to make choyse of these (that I haue) for publique vse, and to leaue the rest for priuate learning.

The manner of the facte, and nature of the offence.

To the further certaintie of the Enditement, the maner of the facte it selfe, and the nature of the offence, oughte to be mentioned also: for if the Enditement be, *quod* A. *captum pro felonia, felonicè & voluntarie ad largum ire permisit*, this lacketh the certaintie for what felonie he was taken, and is thereby voyde, 8. E.43. So, if it be, that a man made 100. shillings of Alchimie *ad instar pecuniæ Dominæ Reginæ*, and doe not shewe, like to what money, as groates, or shillings, &c. it is voide Fitzh. Endit.10. If the Enditement be, that a man is a common theefe, without shewing especially, in what thing, it is nothing worth 22.lib.Ass.Pl.75. And so, if it be of a generall extortion againste an Ordinarie, withoute shewing in what, by 25.E.3,Statz.cap.9. And so also, if the Enditement stande vppon these termes onelye, *Insidiatores viarum, & depopulatores agrorum*, by 4.H.4. cap. 2. And thereupon

vpon the Court sayde, (17.E.4.4.) that vppon such an Enditement, the partie shall be dismissed. Howbeit the Commission of the Peace hath the wordes, *in insidijs iacuerint*, but it goeth further, *ad gentem nostram maymemandam.*

Neither is it good in an Enditemente agaynst an Accessarie, to saye, that he receiued the goodes, without telling, that he receiued the Felon also 27.lib.Ass.Pl.69: 9. H. 4. 1: & 25.E.3.39: nor without telling, that he (knowing it) receiued him feloniously, 7. H. 6.42. vnlesse he receiue one that is attainted of felonie in the same Countie: for then he must at his peril take knowledge of the Attainder, and so no suche mention of knowledge néedeth to be vsed, as it is holden 8.E 4.3. But enquire thereof.

And if such an Enditement be, *Sciens ipsos quatuor homines feloniam, &c. fecisse, apud* D. *felonicè recipit*, it is not good, for that it sheweth not, whiche of them he receyued 30. H.6.2.

Concerning the nature of the offence, this is to be obserued: that in an Enditemente of treason (presentable before the Iustices of Peace) the worde Proditorie ought to be vsed: In the Enditement of Murder, *murdravit* is necessarie, 9. E.4 26. for if it be, *quod* A. *occidit*

occidit B. *malitia præcogitata*, it is not ynough, becauſe one man may kill an other ſo, in a Wager of Battaile, and yet be no murderer. And for the ſame reaſon, if it be of Mãſlaughter, it muſt be *Felonicè*.

An Enditement was, that the ſonne had taken the ſicke father, and carried him into the cold weather, whereof he died, but it was diſallowed becauſe it lacked *felonicè*. Fitzh. Endit. 3. Agayne, if the Enditemente be of Burglarie, then it muſt be *Burglariter*: if of Rape, then *Felonicè rapuit*, for (without *rapuit*) it ſuffiſeth not to ſay, *Felonice cæpit Aliciã, & eam carnaliter cognouit*.

If it be, *Furatus eſt*, it ſeemeth to Marrow to be good without the worde *felonicè*, but 18. E. 4. 10. is againſt him.

If it be *felonicè abduxit vnum equum*, it is not of value without ſaying, *cæpit*, neyther is *cæpit* good alone, without *abduxit*: for it muſt be *felonicè cæpit & abduxit*. Fitzh. Endit. 2, And if it be, *felonicé ſuccidit arbores, & illas aſportauit*: or, *vi & armis ſuccidit arbores, & felonicè aſportauit*. neyther of thẽ will make it Felonie, becauſe the trees be a parte of the freeholde, whereof no felonie can be committed: But if it be, *vi & armis ſuccidit arbores, & eas felonicè* (at an other daye after) *cæpit & aſportauit*, that will make it Felonie, by reaſon

son that the seueraunce of the trées from the frœhold, and the taking, were at diuers times Marr.

And albeit the Enditemente be but of a Mayheme, it must saye, *felonice mayhemauit*, and yet mayheme is no Felonie, but an haynous, and (as it were) a Felonious Trespasse. But where in an Enditement of felonie, the word *felonice* wanteth, there the Enditemẽt may neuertheless stande good to make it a Trespasse. 2.H.7.7: 6.H.7.4: & 18.E.4.10.

And in an Enditement of Trespasse, it séemeth that the wordes *contra pacem* oughte to be yet still: But the necessitie of the words, *vi & armis*, (viz.) *cum baculis, cultellis &c.* be taken away by the Statute, 37.H.8.ca.8. Neuertheless M. Stamf. (F.94.) is of the opinion, that it is not amisse to vse those words, so lõg as the circumstances of the facte doe require them, for (sayth he) The circumstances of an acte, doe either aggrauate, or diminishe the offence therein. If the Enditement be, of forcible entrie, then the wordes *vi & armis* be nédeleste, because they are necessarilye employed in the Force, Marr. And if the Enditement be founded vpon a statute, it ought to saye, *contra formam Statuti*, or (where manye Statutes doe concerne one offence, as in the case of Liueries, and suche like)

contra

contra formam diuersorum Statutorum. But it is not of necessitie, that the Statute be rehearsed, but only that the offence against the Statute be sufficiently described.

Thus farre of these poyntes. But now let vs with a fewe wordes consider what Enditementes be receiuable by the Iustices of Peace, and what oughte to be reiected by them.

Enditements, to be receiued, or reiected.

Generally, they may receiue Enditements before themselues, of all causes being eyther within their Cõmission, or within ỹ Statuts whereof they haue to enquire. And they may also receiue Enditementes taken before the Shirife in his Turne lawfully, that is to say, so that the Turne be holden within the moneth after Easter, or within the moneth after Michaelmas, and so that those Enditementes or Presentmentes be indented and sealed betwene the Shirif and the Iurours, and so that they be made by ỹ Oath of twelue men at the least, and that those Iurours be of good fame and *Legales homines* and may dispend yerelye twentie shillings of Freehold, or twentie fiue shillings eight pence of Copihold W. 2. ca. 14: 1. E. 3. ca. 17: 31. E. 3. ca. 14: 1. E. 4. ca. 2: & 1. R. 3. ca. 4: And for this purpose the sayd Statute (1. E. 4. ca. 2.) bindeth the Shirife to certifie to the Iustices of Peace at their nexte Sessions the

the Enditementes founde in his Turne, or Lawday. It seemeth also (by waye of admitting) in the Booke (27.H.8.2.) that the like ought to be done of the presentments of felony in any Leete, by vertue of the sayd statute of 1.E.4.ca.2. But that is further to be enquired of, for I finde no better warrant for it.

This is certain, that Iustices of the Peace ought to receiue Enditementes found in any Leetes or Lawdayes, vpon the Statute made for the breeding of horses: to which end also, the Courtholders of such Leetes are bound to certifie the same vnto them within the space of fortie dayes, 32.H.8.ca.13.

But Iustices of the Peace haue none auctoritie to receiue an Enditement, of the killing of a man *se defendendo*, sayth Stamf.15. as hee had heard say. But enquire further thereof: for though it be not felonie (as appeareth by the Statute of Glo.ca.9.) yet be there other words in their Cõmission extending to giue them power to heare and determine of suche an offence. But they are not to receiue an enditement of the killing of a Hart proclaimed, for the Iurisdiction of it belongeth to the Iustices of the Forest, 21.H.7.30. Fineux And (as it seemeth) they maye reiecte an Enditement that findeth any matter of Recorde as Vtlawrie, or such like, vnlesse it be shewed vnto

the Iurours *sub pede sigilli*: for Iurours are to finde matters in deede onely, and not of Recorde, 1.H.7.6: & 3.H.7.1. & 10. And so, if the Shirife will offer Enditementes of Liueries, Rauiſhment of Women, or of Felonies by Statutes, or of ſuch other cauſes, whereof they haue no power to enquire in their Turnes, the Iuſtices of the Peace oughte to reiect them, 4.E.4.31: 8. E. 4. 5: 22. E. 4. 22. & Stanford. 87.

Thus muche for the better aſſiſtaunce of our Iuſtice of the Peace, I thought to ſaye of Enditementes: the rather becauſe it behoueth him to iudge of them, and for that they be the cheefe grounde worke whereupon the whole Triall is afterward to be builte and framed.

Of

Of the *Presentmentes* and *Informations* of Officers and other men.

CAP. VI.



Hauing shewed howe these Iustices take knoweledge by the labour of Iurours in Enquestes it followeth to declare also howe they may haue vnderstanding by other men: And that is to be done, eyther by the Presentment of publique officers, or by the Information of priuate persons.

In some cases therefore, these Iustices may heare one an other: for euery Iustice of the Peace maye (vppon his proper knowledge) make presentment at the Sessions of anye offence done against the Actes (2. & 3. Phil. & Mar. ca. 8: & 5. Eliza ca. 13.) concerning the amendment of the High wayes. And in this, & such like cases, his report hath the force of a Presentment of twelue men: So that he and his fellowes may proceede vpon it. 21. H. 6. 5. Of like value is a Presentment made at the

Presentments, of *Iustices* of Peace and *Constables.*

next Sessions by Searchers appoynted to examine the true making of Tile, 17.E.4. ca.4. And of like strength also (as I thinke) is the Presentment of the Constables concerning sundrie poyntes contayned in the Statute of *Winchester*.13.E.1.

Information by priuate men.

This Court may also be giuen to vnderstande by the meanes of priuate men: and that eyther for the Queene onelye, or for the Queene and themselues, or in some speciall causes for them selues withoute the Queene.

That whiche is for the benefite of the Queene, or for hir and the partie, is sometimes moued by the free offer of him that openeth the matter, and sometimes wrought by commaundement of the Court.

Free and Voluntarie, information.

The free motion of the partie, is sometimes by word only, which is properly but a Suggestion, and sometimes by writing, named, a Bill, Plaint, Complaint, or Information: all which be not alwayes of one force in this businesse.

For, albeit that we reade (1.E.5.6.) that the Courte of Chauncerie will sometimes both take knowledge, and also award Processe vpon an Information by worde in the behalfe of the Prince, and that 39.H.6.41. also admitteth such a matter; Yet I thinke that

hat before Iuſtices of the Peace, theſe Suggeſtions and Informations both (bée they by worde, or writing) are but of the force to ſtirre vp the Iuſtices to recommende the cauſe to the Enqueſt, and not to awarde any Proceſſe vpon them: vnleſſe it be in certaine cauſes, where that validitie is ſpecially giuen them by the Statutes, as you ſhall hereafter perceiue.

There was once a time (I confeſſe) when Iuſtices of the Peace mighte haue awarded Proceſſe vpon an Information (for the King only) of offences againſt any penall lawes, euen as they may yet vpon Enditementes againſte the Peace: but that laſted not long, and therfore that courſe is holden now in ſpeciall Statutes only.

Neuertheleſſe, at euerye Seſsions (ſayth Iudge Priſot. 35. H. 6. 15.) the Iuſtices of the Peace doe vſe to make Proclamation, that if any will informe for the Prince, hée ſhall be hearde: and therevppon any man may come in, and may both informe the Iuſtices of the Peace, and giue euidence to the Enqueſt without daunger of Conſpiracie, by the opinion of the Court in the laſt ſayd Booke.

And as that whiche ariſeth vpon Preſentment or Enditemente, is properly called the ſute of the Queene: So this other (whether

it be by Bill, Plaint, Complainte, or Information, is more aptly termed the ſute of the partie: at whoſe ſute, the Iuſtices of the Peace may heare of the abuſe of Innekeepers, and Victuallers, and of Extortions, and Regratories, and perhappes of higher offences alſo, either for himſelfe or for the Queene: but of the other Articles in the Commiſsion, at the ſute of the Queene only, by the expreſſe form of the wordes in the laſt *Aſsignauimus* of the Cõmiſsion of the Peace. But therein among other, ſome amendment (if I be not deceiued) is to be deſired: vnleſſe it be the meaning that they ſhall hold plea of Appeales betweẽ partie and partie, whiche alſo the Statute 8.H.6. c.10. ſeemeth to allow vnto them. In other Statuts at large, ſuch rules are to be followed, as they themſelues doe preſcribe.

And in this Information, the Statute of Additions (1.H.5.ca 5.) ſeemeth (vpõ the bare wordes) to haue no place: for Informations be not mentioned in it: and vpon that reaſon, the Court (13.H.7.21.) did holde it cleare, that if Reſcous be retourned by the Shirife againſt certayn perſons, wout their Additions, yet in that caſe they may well be Utlawed vpon it.

Forced Information.

The other compulſorie informatiõ, groweth by examination of witneſſes called into the Court, and is ſet forth in the Statute of Drouers

Drouers, and Badgers, (5. Eli. ca. 12.) where it appeareth, that vpon the examination of two lawfull witnesses, the Iustices of Peace may make Processe as if it were vpon an Inquisition of twelue men.

The like may they do, vpon the Statute of Armour, 4. & 5. Phil. & Mar. ca. 2. And the very like also maye they doe vppon the Statute made against Forstallers, 5. E. 6. ca. 14. whiche last layd Statute séemeth (for this poynte) to haue bene followed, as a Paterne, by the other two: so right they tread in ẏ steps of the same. Herevnto also you may adde, the examinatiõ of the M. & Mariners of ships, wherin corne or victuall shall be transported against the meaning of the Statute 1. & 2. Phil. & Mar. ca. 5. Sute betweene partie and partie.

Thus much, of the knowledge of causes exhibited by such as eyther doe it at large for the Queene onelye to haue the offence punished, or be specially allured thereto by regard of benefit growing in common to them with the Queene thereby. Now of those that séeke to informe the Courte for profite ensuing to themselues alone.

The knowledge that commeth this way, is by the priuate sute and proper action of the partie, and is therefore in the Statute (11. H 6. ca. 6.) tearmed a sute betwéene partie and partie, whereof that Statute hadde no lesse

consideration, than of those other sutes that bée for the Queene her selfe: and therefore prouided, that they also should not bée discontinued by new Commissions of the Peace to be made.

I know, that there be not many Statutes whiche doe giue power to the Iustices of Peace, to holde Plea betwéene partie and partie, and I thinke it hath not bene often experimented vpō those very Statuts which doe giue it: and how the Iudges doe expound this very Statute (11.H.6.) I cannot tell. Neuertheleſſe, because I may neither wittingly conceale any suche parte of their auctoritie and Iurisdiction, (although it were so but in my opinion) nor safely report it without some proofe, I will giue you one example of this kinde (as I take it) and will leaue the rest to further searche.

The Iustices of Peace haue power to enquire, heare, and determine, of al the defaults against the Statute (made 23.H.6.ca.11.) concerning ỹ leuying of the wages of ỹ Knights of the Parliament) as wel by enquirie at the Kings sute, as by action at the sute of the party.

In this and such like (as in Appeales, by warrant of some large words in the Commission) the Iustices of Peace ought to proceéde

tēde after the vsuall maner of other Courts of Recorde at the common law (if I doe not mistake it) and therefore I wil go no further with it, but will prosecute that hearing & determining that more properly perteineth vnto thē, if first I may shew you, how they are sometimes preuented in that behalfe.

Of the Impedimentes of proceding vpon *Enditements*, before the Iustices of Peace.

CAP. VII.

IT falleth out not seldome, when Iustices of the Peace haue taken an Enditemente founde before them, that they can not procēde to hearing and determining vpon it: either because it is grounded vpon some such Statute as giueth vnto them no further power, but onely to enquire thereof: or else because the Enditement is taken out of their handes by *Certiorari*, and conueyed to Iustices of a higher auctoritie, at the sollicitation and by the meanes of some parties grieued,

to the end that either they may trauerſe them aboue, or there auoyde them for inſufficiencie of forme or matter.

And therefore, Iuſtices of the Peace may only enquire of certaine the offences againſt the Actes (1. El. ca. 2. & ca. 3: 5. El. ca. 1: 13. El. cap. 2.) touching the acknowledging of the Queenes ſupremacie, or the ſeruice of God, or comming to the Churche, or the ſtabliſhment of true religion: as you maye ſee, 23. El. cap. 1.

And they may onely enquire, of anye the Treaſons, or Miſpriſions of treaſons, made by the ſame Act, 23. El. ca. 1.

Neyther can they goe anye further, than onelye to enquire of, and to endite the offendoures againſte anye the Articles of the Acte made (23 El. ca. 2.) concerning ſeditious rumors againſt the Queene.

In the reſt (ſo farre as I haue found) their power of Enquirie is accompanied with the auctoritie to heare and determyne alſo. For this want of Juriſdiction, is not founde in the Commiſsion of the Peace it ſelfe, but onelye in certaine Statutes, that (for waightie cauſes) doe reſtraine this further proceeding.

By what meanes ſuch Enditements ſhall be remoued to thoſe higher Courtes, I will ſhew you when I come to ſpeake of Certifying

ing the Recordes of the Sessions: and will nowe goe on with those other Enditementes that be remoued by labour of the parties.

Albeit, that in the remouing of pleas betwæne partie and partie, from inferiour to higher Courtes, by *Tolt, Pone, Recordare, &c.* there was wont to bée a probable cause alleaged, for which the same were remoued: yet in this case of ỹ Crowne there nédeth no cause to be comprised in the writ of *Certiorari*, bycause they all be the Courtes of the Queene, and it brædeth neither iniurie to the Offendour, nor losse to any other person in what Court soeuer the offence be tried. Enditements remoued by labour of the parties.

This *Certiorari* then, may commaund eyther the Record it selfe, or *Tenorem Recordi*, to be sent vppe, and it oughte to be obeyed accordingly. For, vpon fayle thereof, firste an *Alias*, then a *Pluries* (*vel Causam nobis significes*) and lastly an Attachement shall go out against them that shoulde sende it, as M. Fitzh. noteth in his ~~Nat. Br.~~ Fol. 245. but I haue heard that they vse also a *Sub pœna* at this day.

And albeit the *Certiorari* be a *Supersedeas* of it selfe, yet may the partie vpon the *Certiorari* purchased, haue a *Supersedeas* also, directed to the Shirife. & cõmaunding him that he arreste him not vpon that Record before the Iustices

of

of Peace, Fitzh. *ibid.* Fol. 237. In which place also he doubteth, whether the Iustices of Peace themselues oughte of dutie to awarde their owne *Supersedeas* to the same effect, after that the writ of *Certiorari* is broughte to their handes.

This writ of *Certiorari* is euer directed to the Iustices of Peace, and yet (as you haue heard) the *Custos Rotulorum* onelye hath the keeping of these Recordes, but the auntiente Commissions of the Peace had no *Custos Rotulorum* specially named in them, and then this certifying belonged to them all, whiche forme the Writ reteineth to this day. And if it fall in question whether suche a *Certiorari* were deliuered to the Iustices of Peace, or no, that must be tried (sayth the Booke 10.H.7 24.) by the verdit of twelue men.

Now, if a *Certiorari* come to the Iustices of Peace to remoue an Enditement, and the partie sueth not to haue it remoued, but suffereth it to lie still, the Iustices of Peace may proceede notwithstanding the Writ, as Hubbert the Kinges Attourney sayde 6.H.7.16 for otherwise the triall of a Felon (if the Enditement were of Felonie) might be delayed and deluded also: But yet Keble helde opinion against him, and was fearefull that in suche a case it might proue felonie to make execution after

after such a writ.

And if a *Certiorari* come to the Iustices of Peace to remoue an Enditemente, and in truth the Enditement was not taken till after the date of that *Certiorari*, yet if the Enditement bee remoued thereby, it is good enough, for that they both be the Queenes Courtes, 1.R.3.4.

In the making of a Certificat vppon this *Certiorari*, the Iustices of the Peace oughte neither to omitte that whiche doeth auctorize them, nor to exceede that which belongeth vnto them. The maner of the certificate.

For, on the one side, if they Certifie an Enditement of Felonie, as taken *coram Iusticiarijs ad pacem*, it is not enough without saying further, *Nec non ad diuersas felonias, &c.* and otherwise, it is doubtful, whether the Endited shall be quite dismissed, or no: because the Iustices of Peace haue then no Recorde at all remayning with them (for the Clearke of the Peace maketh his Entrie accordingly,) and that Recorde which they sent vp, is insufficient. And therfore, the Clark of the Crown was forbidden to receaue any such Certificate. 12.H.7.25.

On the other side, if they certifie one Enditement of felonie not determined, into the Kings Benche, they ought not (without warrant)

rant) to certifie an other Recorde of the acquitall of that Enditee for the same matter: for, nothing ought by them to be sent thither without warrant, but that which is executorie, and néedeth the helpe of that Court. 8 E. 4. 18.

And if a *Certiorari* bée, to send vp the Enditement of A. in which Enditemente some others be endited togither with the same A. yet néede not the Iustices of Peace to make Certificat concerning any but A. 6. E. 4. 5 For although they be named ioyntly, yet be they endited seuerally (as I haue sayd before) and the Queene maye pardon A. without forgiuing the other, 6. E. 4. 5. Markam.

Finally, it is noted (8. H. 5. 5.) that Hankforde the chiefe Iustice of the Kinges Benche, obserued this order, that he which brought thither an Enditement taken before Iustices of the peace, should endorse his name vppon the backside of it: whiche I note, not to teache them of the Kinges Benche, but to lette the Iustices of peace sée, that there is some héede to be taken of him by whom they send vp their Enditements.

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Of

Of the *Processe* vppon Enditementes, and Informations.

CAP. VIII.



THe Court being thus made priuie and possessed of causes, must of duetie proceede to the handling (or hearing) and triall of them: the whiche bicause it can not indifferentlye doe, vnlesse it kéepe one eare for the offendour, that he also may be hearde in his owne discharge, as others were hearde to lay the charge vppon him, the manner is to awarde Processe againste him to come in and to aunswere.

For commonly, an Enditement, or Information (being but an accusation, or declaration agaynst a man) is of none other force but to put him to aunswere.

And hereof all Processe hath the name, bicause it proceedeth or goeth out vpon former matter, either Original or Iudicial. Howbeit I make difference whether this Processe bée grounded vpon an Enditemẽt, or vpon some other

Processe, whereof it is named.

other information: for they be not all one: vnlesse it be (in a fewe Statutes) so specially prouided: Although the Statute (33. H.8.ca.10.) didde once conioyne and couple them.

Auctoritie to make out processe.

The power of making processe vpon Enditementes, is giuen by expresse words in the ende of the seconde *Assignauimus* of the Commission: and in other cases (where it is not namely giuen) it implyed of congruence (or rather of necessitie) in the words heare and determine, which can not be performed, vnlesse the partie doe eyther come in, *gratis*, or be brought in by processe.

This Processe ought alwaies to be in the name of the Queene, thus: *Elizabeth Dei gratia, &c. Vicecomiti Kancia, &c.*

Teste of the Processe.

And the *Teste* thereof maye be vnder the names of any two Iustices, so that it be made sitting the Court in the Sessions. *Commission del Peace, &* Brooke *Tit. Peace.* 6. & 7.

New commissions of Peace, doe not discontinue the olde processe.

But now, wheras the Commission giueth to the present Iustices auctoritie to make processe vpon Enditements, taken as wel before former Iustices, as before themselues, al that doing was wont to be discontinued in Lawe by the comming out of a newe Commission of the Peace, vntill that the Statute (11.H.6. ca.6) did establish, that no pleas, suits, or processe

ceſſe, to bée taken béefore Iuſtices of the Peace, ſhoulde bée diſcontinued by a newe Commiſsion of the Peace to bée made, but that they ſhould ſtand in their ſtrength, and that the Iuſtices aſſigned in the ſame newe Commiſsion, ſhoulde haue power to continue the ſame, and to heare and determine all that which dependeth vppon them. And of the like effect, there is a braunche in the latter ende of the Statute, 1.E.6.cap.7.

Enditement before Shirifs.

Furthermore, whereas Shirifes and their Baylifes, vſed to arreſt menne and to procéede vppon Enditementes founde in their Turnes or Lawdayes, an other Statute made (1.E.4.ca.2.) wringeth that power out of their handes, and deliuereth it ouer to the Iuſtices of the Peace alſo, appointing them to procéede vppon them, as if they had bene founde before themſelues.

Proceſſe of Vtlawrie.

Nowe, ſéeing that this Proceſſe of the Seſsions is ſent out to this ende, that either the partie ſhall come in to aunſweare, and bée iuſticed by Law, or elſe that he ſhall for his contumacie bée depriued of the benefite of Law (for ſo much in effect do the wordes of the Commiſsion, *Quouſque capiantur, reddant ſe, aut vtlagentur*, importe in them) it followeth, that in al caſes of Enditements, (if the partie bée retourned inſufficient) the

Proceſſe of Vtlawrie, lyeth agaynſte the offendor, if he bée not taken before, or doe not otherwiſe offer and yéelde himſelfe.

But a good while after that Commiſſions of the Peace were firſte awarded, there was not giuen by them any power to make out any Proceſſe of Vtlawrie, for I haue ſéene a Commiſſion of the Peace (20. E. 3. *Part.* 1. *Patent. in dorſo.*) wherin were words auctoriſing the Commiſsioners to arreſt all ſuch as ſhoulde bée endited before them: but by and by this followeth, *Et ad nomina eorum qui fugerint, & coram vobis iuſticiari noluerint, certificandum in Cancellaria, &c.* So that if they mighte not gette them arreſted, they coulde goe no further but to certifye theyr names.

The generall Proceſſe vpon Enditements of Treſpaſſe.

The meane to this Vtlawrie is not one in all caſes: for vppon Endytementes of Treſpaſſes agaynſte the Peace, or ſuch other contemptes, the Proceſſe is one: and vppon Enditementes of Treaſon or Felonie, it is an other.

Vpon Enditementes, of Treſpaſſe againſt the Peace, of Conſpiracies and of Routes in preſence of the Iuſtices, or in affraye of the people, if the offendors maye not bée founde, nor brought in by Attachment, or Diſtreſſe, (by reaſon of their inſufficiencie) the Proceſſe

ceſſe of Vtlawrie is to bée awarded, by the Statutes 18.E.3.Stat.1: 18. Edw.3. Stat.2.cap. 5. The like is agaynſte ſuche as bée endyted vpon the Statute of Liueries. 8. Hemi. 6. cap.4.

And a *Venire facias* firſte, and then (if therevppon he bée retourned ſufficient) a *Diſtringas*, and ſo the ſame Proceſſe infinite till he come in: but if a *Nihil habet &c.* be at the firſt returned againſt him, then a *Capias alias & pluries*, and after an *Exigent* (as it ſæmeth by M. Marr. and the olde p̃cedents agræing with the Common Courſe as I take it,) is the o̅dinarie Proceſſe vpon all enditements (not ſounding in Felonie, o̅r greater offence) whether they be of Treſpaſſe agaynſte the Peace, o̅r of contempts agaynſte penall Lawes, vnleſſe it be otherwiſe ſpeciallye p̃ouided by thoſe ſame Statutes wherevpon ſuch Enditementes be altogither grounded. And of this ſo̅rt, theſe be ſome.

The ſtatute (22.H.8.ca.5.) cõcerning Bridges in highwayes, alloweth ſuch Proceſſe as the Iuſtices of the Kings Benche doe vſe, o̅r ſuch as the Iuſtices of the Peace themſelues ſhal think mẽete by their Diſcretion, fo̅r the ſpædie amendment of thoſe Bridges. Speciall Proceſſe.

Vpõ enditemẽts of Liueries, maintainance, Archerie, vnlawfull games, &c. by the Sta-

tute (33.Hen.8.cap.10.) there was giuen one *Venire facias*, one *Capias*, and then the *Exigent*: But it is to be weyghed, whether the Statute (37. Henri. 8.cap.7.) which vtterlye repealeth that Statute (33.Henrie.8.) doe transferre the manner of that Processe vnto the auntient Quarter Sessions (as it doth sundry other parts of the said Statute) or no.

The Statute of Labourers (23.H.6.cap. 13.) gaue (after Enditementes grounded therevppon) an Attachment, *Capias* and *Exigent*: But I thinke it no great doubt, but that point is taken away for Labourers, by the new Statute (5.Elizab.cap.4.) and standeth good for none, except it bee for Victuallers onelie.

Processe vpon Recognusance.

The Statute 5.E.6.ca.25. giueth power to ỹ Iustices of Peace, to enquire of Alehouse-keepers, whether they haue done any acte to the breach of their Recognusance. And if any such matter be presented, then to award Processe against the offendor, to shew why hee shoulde not forfeit hys Recognusaunce: but what this Processe shall bee, I will not determine: For, I do not finde, that in any other case (though it appeare that a manne hath forfeited hys Recognusaunce) the Iustices of the Peace can awarde any *Scire facias*,

cias, or other Processe to call hym in vppon it, but are rather to certifie the same into higher Courtes, that from thence Processe may issue out, to call the partie to answeare therevpon.

Some other Statutes there be, that haue extended the auctoritie of the Iustices of Peace (in sending Processe) beyonde the boundes of their owne Commission. For, by the Statute (1.E.6.ca.1.) three Iustices of the Peace (the one beeing of the *Quorum*) may make Processe against such as bee therevpon endited for deprauing the Sacrament by two Writtes of *Capias*, and the *Exigent*, and by *Capias vtlagatum*, into anye place within the Queenes dominions. Processe into other Shires.

So, if a seruaunt departe into an other Shire, the Iustices of the Peace of that Shire, (where the departure was) maye graunte Writtes of *Capias*, to the Shirife of that other Shire (where the seruaunt is) returnable before themselues, 5.Elizab.cap.4.

The like may they doe (by the Statute (22.Hen.8.cap.5.) where a decayed Bridge lyeth in one Shire, and the person or landes (chargeable thereto) doe lye in an other Shire.

But if the Enditement be in one Countie, and the Enditee bee named to bee (then,

or *Nuper*) dwelling in an other Countie: there is a ſpeciall courſe of Proceſſe in that behalfe for his beneſite, appoynted by the Statute (8.H.6.ca.10.) both for Treaſon, Felonie, and Treſpaſſe: for (before any *Exigent*, ſhall bee awarded) one *Capias* muſte bee ſent out, and returned, and then a ſeconde *Capias* ſhall goe (into the Countie where hee is ſuppoſed in the Enditement, to be, or to haue beene, conuerſante) retournable (before the ſame Iuſtices of the Peace, before whom the Enditemente was taken) three moneths at the leaſt after the date thereof (for all Counties be nowe holden from moneth to moneth by 2.Ed.6.ca.25.) by whiche laſt Writte, the Shirife ſhall be commaunded to take the Enditee, if hee may be founde within his Bayliwike, & if not, then to make Proclamation in two Counties (before the returne of that Writte) that the Enditee ſhall appeare before the ſayde Iuſtices of the ſayde Countye (where the Enditement was taken) at the day contayned in the laſt ſayd *Capias*, to anſwere to his offence: at whiche daye if hee come not, then the *Exigent* ſhall be awarded againſt him, and other wiſe not.

And by the equitie of this ſtatute of (8.H.6.cap.10.) (ſayth M.Marr.) if the Enditee bee impriſoned in an other Countie, the Iuſtices

ces

ces of Peace may awarde an *Habeas corpus* to remoue him before them.

But al this Processe of Utlawrie may bee staid by a *Supersedeas*. And Fitz. in his Nat. Br. (Fol. 137.) hath the case, that if an *Exigent* goe out vppon an Enditement of Trespasse found before Iustices of the Peace, the partie maye finde suerties in the Chauncerie, (bodie for bodie) to appeare at the day of the Writ, and may then also haue a *Supersedeas* frō thence to the Shirife, commanding hym to forbeare to take him, & to let him go if he haue then alreadie takē him for that cause. And againe you may see in the new booke of Entrees (Fo. 546.) the Proceſſe vpon such an Enditement stayed by a *Supersedeas* issuing from one Iustice of the Peace alone, & testifying, that the partie came before him, and found suerties *de fine assidendo*. But, as I beleeue the former, so wil I not perswade the practise of the latter, because I thinke it not in ỹ lawfull power of any one Iustice of the Peace, to award any such warrant, but that it must be done by two Iustices at the leaſte.

Supersedeas to stay Proceſſe.

I haue yet to speake of Proceſſe vppon Enditementes of Treason and Felonies, wherein I will bee shorte, that I may passe ouer to other things.

Proceſſe vpon Enditements of Treason and felonies. &c.

The Proceſſe vppon an Enditement of

Treason, for counterfaiting money, is by *Capias* onelie, and so sette forth, 3.H.5.cap.7. neyther is there any other Treason whereupon Iustices of the Peace maye awarde Processe.

It seemeth by M. Marr. that the Processe at the common Lawe vppon Enditements of felonie, was but one *Capias*, and then the *Exigent*: But the olde Precedents (grounding themselues vppon the Statute (25.E.3. cap.14.) do vse the mention of two Writs of *Capias* before the *Exigent*. For that Statute prouideth, that after returne of *Non est inuentus* vpon the firste *Capias*, another *Capias* shall be incontinently awarded, whereby the Shirife shall be commaunded to seise the cattailes of the Enditee, and safely to keepe them, til the day of the *Capias* retourned: & if hee then also returne *Non est inuentus*, and the Enditee commeth not in, the *Exigent* shall bee awarded, & the Cattailes shall bee forfeited: But if he come & yeeld him, or bee taken before the returne of ỹ seconde *Capias* the goods & cattels shall bee saued vnto him.

Processe into forraine Shires

And here also the Iustices of Peace haue power to send into a Forraine Countie: for, whereas by the commō Law no man could be Attached vppon an Enditemēt, or Vtlawrie of Felonie, but onelye in the Countie, where-

wherein he was Endited, or outlawed, whereby manye euill men were muche incouraged, the Statute (5 Edward 3. ca. 11.) did take order, that Iustices assigned to heare and determine Felonies) might direct their Writtes to any Countie in *England* to take such Enditees, whether soeuer they had remoued themselues.

On the other side, if the Enditement be founde in one Countie, and the Enditee is therin named to be thē dwelling in another Countie: I haue tolde you alreadie (in this Chapter) what Processe belongeth to it, and therefore I wil in hand with Processe vpon Informations.

The power of making Processe vpon Informations, procedeth frō special Statutes, and maye not therefore varie from their direction, although they themselues doe varie one from another. Processe vpon Informations.

For vpon an information, giuen for the Queene before Iustices of the Peace, vpon the Statute of Lueries (made 8. E. 4. cap. 2.) they shal awarde suche Processe as is made vpon an Original Writte of Trespasse done againste the Queenes Peace, because the Information it selfe is (by force of that Statute) in steade of an Original Writte. Lueries.

And vpon Information made vnto them, Alehouse.

that an Alehouſe keeper hath done anye acte wherby he hath forfaited his Recognuſance, they may awarde Proceſſe againſt him, to ſhew why he ſhould not forfaite hys Recognuſance, by the Statute 5. E. 6. ca. 25. as hathe bene ſaide: But learne if that be meant of a *Scire facias*, or of ſome other Proceſſe.

Of Hearing, vpon Confeſsion.

Cap. ix.

THe partie being thus brought in (or otherwiſe yéelding himſelfe) to anſwere, Iuſtice requireth, that he be heard to ſpeake: and therefore he may (as his caſe wil ſerue) either confeſſe or denie the offence wherewith he is burdened.

Free confeſsiō. And this Confeſſion is of two ſortes, Free, or Forced: and that former is of two kindes alſo, abſolute, or after a manner.

In the open (or abſolute) Confeſſion, he taketh

taketh the faulte vppon him, and yéldeth himſelfe ſimplie to ſuch paine as the Court wil inflict for it.

And this frée Confeſſiõ is of great force in Law: for, if it be vpõ an Enditement of Batterie, and (after ſuche confeſſion had for the Queene) the partie beatẽ wil alſo bring his Action of Treſpas for his owne damage, thẽ ſhal the defendant be concluded by his confeſſion vpon the Enditement, ſo that he ſhal not be receiued to ſay the contrary. 9. H. 4. 8: & 11. H. 4. 65.

But the other (which I cal Confeſſion after a maner) is only a not denying, in which the partie doth cunninglie, and (after a ſort) take the fault vpon him, without confeſſing himſelfe guiltie therof: as where he putteth himſelf in *Gratiã Regina* without any more, or (by Proteſtation that he is not guiltie) pleadeth his pardon: And ſuch a Confeſſion (If I maye ſo call it) doeth not ſo conclude him, but that he may afterward pleade Not guiltie in any Action brought againſte hym. 9. H. 6. 60. *Cur.* & 11. H. 4. 65.

The forced Confeſſion, whereof I ſpake, is that, which ẏ Iuſtices do wring out of the partie by ẏ Examinatiõ of him, in ſuch caſes wherein examination is permitted. But becauſe I intend to ſpeake of Examinatiõ, by it ſelfe, Forced Confeſſion.

selfe, I will reserue this till I come to that.

Of hearing, by Discretion.

Cap. x.

Whether the offender, shall frælie confesse the faulte, or finelie yéelde him selfe to Grace, or pleade his pardon without confessing it, yet then is that matter fullye heard, and the Court made readie to determine of it: But if he shal denie the fact, then muste some other course of Hearing (or triall) be taken for it.

And that is in some cases, by Discretion of the Iustices: in some other cases by Examination of the parties or witnesses: and in some other cases by Certificat of other men, but in moste cases by Trauerse or Araignement, both which last trials are performed by the verdite of twelue.

For Iustices of the Peace, can not (vpon an

an Inditemente of Mayheme) make the Triall by their owne viewe, or inspection as the Justices of the Kings Bench maye, saith Marr.

The Statute (11.H.7.cap.3.) pretending, that offences committed againste the Statutes of Riottes, Retainers, Maintenances, Embraceries, Extortions, Vnlawful games, and such like misdemeanours, were neither accordinglye punished before Iustices of the Peace, (by reason of the greate corruption, and fauour of the Enquestes, sworne and charged therevpon to enquire before them) nor coulde be otherwise conuenientlye corrected by order of Lawe, vnlesse they were founde and presented by twelue men thereto duelie sworn, did enact, that from thencefoorth Iustices of the Peace, vppon information made (for the King) before them, should haue ful power by their Discretion, to heare and determine all offences and contempts againste manye penal lawes, then in force, and not repealed.

But (as one saide) *Ex bonis legibus, mala exempla*: So, the Parliament (1.H.8.cap.1.) complayned, that manye men were deceitfully entrapped, and wrongfully condemned thereby, and therefore it resumed that power: yea, and the King withall chopped off

off the heads of some of them that had filled his fathers purse by the execution of that and some other penal Statutes.

So that now againe the Trial of offences oughte (for the moste parte) to proceede, eyther after the generall order of the common Lawe, or vpon suche speciall examination (or other proofe) as some Statutes doe giue in speciall cases: and this hearing at libertie and discretion, hath seldome any place.

But whersoeuer it is permitted, that counsel which M. Bracton (*Lib.* i.) giueth, is to be hearkened vnto: In Iudiciall hearing of a fault (sayeth he) besides the bodie of the fact it selfe, these seuen circumstances are to bee weyghed, namelie, the cause, the person, the time, the place, the quantitie, the qualitie, and the euent.

And for proofe, that hearing by discretion, is yet in some sorte suffered, take thys for example.

The Iustices of Peace may heare by their discreation, as well by Examination, as otherwise, at the suite of the King, or of the partie, the offences done againste the Statute prouided for the true making of Tiles 17.E.4.ca.4.

But

But howe farre this discreation, and the worde Otherwise maye bée extended in thys, and such like cases, it can not wel be foretolde, for it is referred to them, and they must take counsell *ex re, et ex tempore*, for it.

Of Hearing (or *Triall*) vpon *Examination*.

Cap. xi.



The obstinacie of euil doers, that woulde shewe no conscience in acknowledging of their faultes, and the corruption of Iurors, that woulde presente nothing that lay onlie in their owne knowledges, hath begotten and broughte into our Lawe, thys tryall by Examination, wherewith it was not before acquainted.

And yet, thys manner of Triall is not lowsly permitted to Iustices of the Peace, but

but in cases onelie, where, either the Statutes do generallie referre the trial to their Discreations, or else doe speciallie auctorize them to take the Examinations.

Examination of the parties.

The Examination then, is sometimes of the offendours themselues, sometimes of Witnesses that can speake to the matter, and sometimes both of the parties and witnesses: of euerie of which I wil giue you an auctoritie, or twaine, and leaue the reste to your owne reading and examination.

Liueries.

Upon apparance (after Processe) against the offendors of these Statutes of Liueries, the Iustices of Peace maye examine them, and therevpon conuince them so, as if they were thereof conuict by Enquest, 8. H. 6. cap. 4: & 8. E. 4. ca. 2.

Deere hayes. &c.

They may also call before them, and examine, all suche as shall be suspected to kéepe Deere hayes, or Buckstalles, or that vse to stalke or to take yong Herons against thys Statute, and may (finding them faultie) cõmit them to prison, til they finde Suerties to pay the forfeiture 19. H. 7. ca. 11.

Examination of others.

And because it is often séene, that those which haue committed an offence, wil also increase their fault by denying of the same, therefore some Statutes (as I saide) do appoint, that the Iustices of Peace shall take the

the examination of others, besides the offendors themselues.

And thereupon the vsers of false priuie tokens, or of counterfaite Letters, may be tried out by the examination of Witnesses, 33. H. 8. cap. 1. False tokens.

And the vnlawfull takers of Hawkes egs, or Swannes egges, may be detected and conuinced by information, and such prowfes, 11. H. 7. ca. 17. Hawkes egges.

Nowe, whereas also some statutes doe enable the Iustices of Peace to heare and determine, by the generall vse of the worde Examination, without shewing of what persõs: it seemeth to me that they maye thereuppon examine as well the parties, as other Witnesses.

Suche an one is the Statute prouyded for the true making of Tiles, 17. E. 4. ca. 4. Such another is the Statute, made for the examination of offences done by Coroners, 1. H 8. ca. 7: And suche another also is the Statute, ordayned for the examination of putting into Forests, or Wastes, any stoned Horses beeing vnder the height of fifteene handefuls, 32. H. 8. ca. 13. Tiles. Coroners. Stoned horses.

Thus farre of Examinations: which whether they ought to be taken vpon oath, or no, you maye coniecture by that whiche I haue

alreadie sayd thereof in the first Booke: and yet (for more aide towardes your resolution) I say nowe, that these examinations oughte (in my slender iudgement) to be vppon oath, because the triall here dependeth vpon them, whereas those others are but to enforme the Iurie towards an Enditement only, in so much as the parties are bound to giue ẏ matter of them in euidence agayn, *Viua voce*, whē the trial shall be made.

Of Triall (or Hearing) by *Certificat*.

Cap. xii.

BEfore some other Iudges, the Lawe hath allowed Triall by sundrye sortes of Certificat: as from the Queenes Lieuetenāt, in ẏ case of Escuage: from the Bishop, in the cases of Bastardie, Bygamie, Excommunication, &c. and in some other cases from other men: But, before Iustices of ẏ Peace, I haue not hitherto found any triall by Certificat appointed by Statute, but in this one case following.

If

If any man (being impeached vpon this Statute of Armour, for not hauing his appointed furniture) shall alledge, that the same furniture so lacking, coulde not bee conueniently prouided, for want of the same within the Realme, this shall be taken for a good aunswere (in case it be true) but if it be denyed or trauersed, issue shall be ioyned vpon it, and the Triall shall be onelye by Certificat to be made by the L. Chauncelor, L. Treasorer. L. President of the Counsell, L. Steward of the Queens house, L. Priuie Seale, L. Admirall, and L. Chamberlayn of ỹ sayde houshold or by three of them, in writing vnder their Seales, 4. & 5 Phil. & Mar. cap. 2.

For, the Certificat of the offence, and of the Recognusance taken by two Iustices of the Peace (one being of the *Quorum*) of him that hath obstynatelye kepte a common Alehouse agaynste the Statute 5. E. 6. cap. 25. is made a sufficiente conuiction of the same offence without further Trial, thereof to bee had at the Sessions of the peace. Alehouse keeper.

Of Hearing (or *Triall*) by Trauerse.

Cap. xiii.

The most solemne, and auntient Triall of the fact, againste an offendor that will not confesse it, is that whiche we sée perfourmed by the verdite of twelue good and lawfull men of the Countrie: and it also doeth best contente and quiet the guiltie man, for that it passeth by his owne Countriemen, Neighbours, and Peeres, according to the auntiente libertie of the Lande, whereunto euerye frée borne man thinketh himselfe inheritable: and therevppon it is named (Mag. Cart. cap. 29) *Legale iudicium parium suorum*, the lawefull iudgement of a mannes owne Peeres, or Equalles: because, as the Nobilitie, so also the Communaltie, are to be tried, in treason, Felonie, or misprision of treason, not the one by the other, but eache by men of their owne estate and calling: I meane by the worde Nobi-

Nobilitie, as our own Law speaketh (which calleth none Noble, vnder the degree of a Baron) and not as men of forraine Countries doe vse to speake, with whome euerye man of Gentile birth is acompted Noble, for wee dayly see, that both Gentlemen and Knights, doe serue in the Parliament, as members of the Communaltie: Howbeit, in cases of forcible Entrie, Riot, Rout, vnlawfull assemblie, or suche like, they of the Nobilitie shall be tried by twelue men, as wel as other inferiour subiects, 3 & 4. Phil. & Mar. reported by Dalizon.

This Triall happeneth before Iustices of the Peace, sometimes vppon Trauerse, and sometimes vpon Arraignment.

But yet, some thinges be commune to them both: For, if the partie charged, will Demurre in Lawe vppon the euidence, the Iustices ought to recorde his Demurrer. So if he will pleade in Iustification, anye matter of Recorde that is before other Iustices, they oughte to giue him daye to bring it in. Marr. So also, if the Iustices (thinking an Enditement to be voyde) haue discharged the Prisoner (paying his Fees) yet, vppon chaunge of their opinyon, they may stay him agayne, at anye time before Iudgemente. Fitz. Endit. 27.

But if he pleade a Pardon before them in which certayne persons be excepted, and the Queenes Attourney is not present to ioyne issue, that he whiche pleadeth it is one of those that be excepted, then they themselues may supply the office of the Attourney, in that behalfe, 8. E. 4. 7. whereupon also I gather this generall learning, that they ought not to suffer the Queene to be disaduauntaged, where it lyeth lawfullye in their power to preuent it.

The Queenes aduauntage.

And if an Inditement be challenged, for suche cause as these Iustices will not allowe, then maye they seale a Bill, of that exception for the partie, if he will write and require it according to the Statute W. 2. cap. 30. as M. Marrow writeth.

Trauerse.

The Trauerse toke name of the Frenche, de Trauerse, whiche is not more than *de transuerso*, in Latine, signifying, on the other side: because, as the Enditemente on the one side chargeth the partie, so hee on the other side commeth in to discharge himselfe. For, whereas the Arraignmente proceedeth vppon hym that is vnwillinglye brought in by Processe, the Trauerse is (for the moste parte) freelye tendred by the partie.

To Trauerse an Enditemente then, is to take

take issue vppon the chiefe matter thereof, whiche is none other to saye, than to make contradiction, or to denye the poynte of the Enditement. As in a Presentment against one for beating the seruaunt of A. the partye may come in, and maye chuse to saye, that hee did not beate him, (whiche is to trauerse the matter) or that he is not the seruaunt of A. (which is to trauerse the cause) but hée can not saye, that A. losse not his seruice: for thereby the batterye is confessed, and then of necessitie it followeth, that he is a Trespasser, 31. H. 6. 12: & Brooke Tit. Trauerse 182.

And this libertie of Trauerse, is commonly restrayned to Enditementes of Trespasses, Contempts, Riots, and other inferiour offences, within the Commission, or Statutes, auctorizing the Iustices of Peace: and is not vsually extended to Treasons or Felonies, as you shall hereafter sée.

M. Brooke noteth that it is not muche vsed to Trauerse Enditementes before Iustices of the Peace, but rather to remoue them into the Kings Bench, and to Trauerse them there: Howbeit commune experience at this daye can shew many Trauerses before Iustices of the Peace also. *Trauerse* before *Iustices* of the Peace.

And there is no doubte, but that as

Iuſtices of the Peace haue power to awarde Proceſſe, and the parties alſo haue libertie to ſpeake for themſelues: So (hauing ſpoken) the Iuſtices maye Heare and Determine of their ſpeeche, whether it touche them in freholde, or otherwiſe.

For although it be holden (2.R.3.11: 19.H.8. 11: & Fitzh.Tit.Aſſ.442. and in other bookes) that a manne ſhall not bee receiued to trauerſe a Preſentmente, vnleſſe it doe charge his freeholde: yet Huſſey and Fairefax ſayde (5.H.7.4.) that a Preſentmente (not concerning freeholde) whiche is founde before Iuſtices of the Peace maye be trauerſed: and whether they meante it of a Trauerſe in the Kinges Benche, or before Iuſtices of the Peace, it maketh no difference, becauſe the reaſon is all one, that is, If Proceſſe bee awarded the partie maye come in, and offer his Trauerſe, and otherwiſe the Proceſſe ſhould be in vayne.

Hereunto agreeth Moubray (41.Ed.3.26.) ſaying further, that in a Leete ſuche a Preſentment is not Trauerſable, becauſe oute of a Leete no Proceſſe canne be awarded vpon it. And this peraduenture is the reaſon of the booke (8.E.4.ca.5 and of M.Marr) where they ſaye, that a Preſentment of bloudſheade founde in the Shiriſes Turne, and ſent (as it ought

ought to be) to the Iuſtices of Peace, cannot bee trauerſed before them, as wherevpon they can neyther make Proceſſe, nor diſcharge the partie by way of Plea.

So that this ſæmeth a generall learning, that whereſoeuer any Proceſſe *ad reſpondendum* goeth out vpon ſuch an Enditement as is trauerſable, there alſo the partie may offer and ought to haue, his Trauerſe.

But Marrow ſayeth, that if a man bée of an Enqueſt that Endited him of Treſpaſſe, or ſuch like (ſo that vppon the matter, hée endited hymſelfe) this is ſo ſtrong, that hée ſhall neuer bée receyued to Trauerſe it.

It is not my meaning to peſter this latter Booke with Precedents: But yet, for as muche as in the Recorde of one Trauerſe, there is at once diſcouered the Stile of the Seſsions, the Enditement, the Proceſſe to aunſwere, the Trauerſe it ſelfe, the Verdite, and Iudgement therevppon, the Proceſſe of execution, the yéelding of the parties, and the aſſeſſement of their fines, ſo that it alone may ſerue in ſtéede of all, I truſt it ſhall not bée troubleſome to inſert it.

ALias ſcilicet ad Seſsionem pacis, tentam apud Somerſ.
Bridgewater, *in cõmitatu prædict. die Mar-* *Stile* of the
tis *Seſsions.*

tis proximè ante festũ Sancti Mathæi Apostoli anno regni Dom. nostræ Elizabethæ dei gratia Angliæ, Frãciæ, & Hyberniæ Reginæ, fidei defensoris, &c. vicesimo, Coram Iohanne Stowell milite, Humfrido Walron, vno Magistrorum Curiæ Cancellariæ dictæ D. Reginæ, & alijs socijs suis Iusticiarijs dictæ Dominæ Reginæ ad pacem in commitatu prædicto conseruandam, Necnõ ad diuersas felonias, transgressiones & alia malefacta in eodem commitatu perpetrata audienda & terminanda assignatis, per sacramentum xij. Iuratorum extitit præsentatum, quod Iohannes Long, de &c. R.M. de &c. & T.L. de &c. cum diuersis alijs ignotis malefactoribus, & pacis dict. Dom. Reginæ perturbatoribus, modo guerrino arrayati, vniti, & assemblati, vicesimo die Iuly in nocte eiusdem diei, anno &c. Vi & armis (viz.) Baculis, gladijs, clipeis, pugionibus, falcastris, & alijs armis, tam inuasiuis, quam defensiuis, apud C. &c. clausum cuiusdam Wil. Willet (vocatũ B.) illicitè, riotosè, & routosè fregerunt, & intrauerunt, & octo plaustra fœni ad valẽciam &c. adtũc & ibidem existentia, de bonis & catallis dicti Willi. Willet adtunc & ibidem iniustè & illicitè ceperunt & asportauerunt, contra pacem dictæ Dominæ Reginæ &c. Et contra formam Statuti inde editi & prouisi. Per quod preceptum fuit vicecomiti quod non omitteret &c. quin venire faceret eos ad respondendum &c. postea scilicet

Enditement.

Processe to aunswere.

ſcilicet prædicto die Martis proxime ante feſtum Sancti Mathei Apoſtoli anno viceſimo ſuprædicto, coram præfatis Iuſticiarijs venerunt prædicti I.L.R.M. *&* T.L. *in propriis perſonis ſuis, & habito auditu Indictamenti prædicti, ſeparatim dicunt, quod ipſi non ſunt inde culpabiles, Et de hoc ponunt ſe ſuper patriam: Et* Adam Martin *qui pro Domina Regina in hac parte ſequitur ſimiliter &c: Ideo veniat inde Iurata coram Iuſticiarijs dictæ Dominæ Reginæ ad pacẽ in commitatu prædicto conſeruandam aſſignatis &c. ad Seſſionem pacis apud* Welles, *&c. die Martis proxime poſt Epiphaniam Domini tunc proxime futuro tenendam. Et qui &c. Ad recognit. &c. Quia tam &c. Idem dies datus eſt tam præfato* Adam Martin *qui ſequitur, &c. quàm præfatis* I.L.R.M. *&* T.L. *&c. Ad quas quidem Seſſiones pacis, tentas apud* W. *prædict. in cõmitatu prædicto die &c. Coram Domino* T.P.G.N. *&* H.P. *milit. & ſocijs ſuis Iuſticiarijs dictæ D. Reginæ ad pacem in commitatu prædicto conſeruandam, Necnon ad diuerſas felonias, tranſgreſſiones, & alia malefacta in eodem commitatu perpetrata audienda & terminanda aſſignatis, venerunt tam præfatus* A.M. *qui ſequitur &c. quã præfati* I.L.R.M. *&* T.L. *in propriis perſonis ſuis, Et Iuratores prædicti, per vicecomitẽ Cõmitatus prædicti ad hoc impanellati, & exacti (viz)*

Traueſe.

Iurie.

Day giuen.

Iacobus

Iacobus F.Gen.I.G.&c.similitur venerent,qui ad veritatem de præmissis dicendam triati & iurati dicunt super Sacramentum suum,quod prædicti I.L.R.M.& T.L.culpabiles sunt, & eorum quilibet culpabilis est de transgressione, contemptu,& riotto prædictis in Inductamento prædicto superius specificatis,modo & forma prout superius versus eos supponitur: Ideo concessum est per curiam,quod prædict. I L.R.M.& T.L.capiantur ad satisfaciendum dict D. Reg. de finibus suis occasione trangressionis, contemptus & riotti prædict.Qui quidem I.L.R.M & T.L.adtunc & ibidem præsentes in Curia petierunt se ad finem cum dicta Domina Regina occasione prædicta admitti:Et inde ponunt se separatim in misericordiam D.R:Et assessatur finis eiusdem I.L.per Iusticiarios prædictos,ad 3.li.6 s.8 d.Et finis eiusdem R.M. Assessatur ad xx s.Et assessatur finis eusdē T.L.ad quinque libras, bonæ & legalis monetæ Angliæ,ad opus & vsum dictæ Dominæ Reginæ.

Verdite.

Iudgement.

Capias pro fine.

Ponunt se in misericordiam Reginæ.

Fine assessed.

And this is to be noted, that this Recorde was afterwarde remoued into the Kinges Benche, and that the partie was dismissed there,for want of those words in the Enditemente, that you see vnderlined in other Letters,in certaine partes of the same.

Enditement voyde.

Of

Of *Triall* vppon *Arraignment*, and therewithall of the *Triall* of *Felonies*.

CAP. XIIII.



Arraignemente and Trauerſe, doe not ſo muche differ in the nature (or ſubſtance) of the Triall it ſelfe, as in the order or vſage of the ſame. For as ther is no Enditement, Trauerſable by the partie, but that hee maye alſo bee arraigned vppon it: So likewiſe is there no Enditement, whereupon the partye maye bee arraigned, but that he maye alſo (if hee will) tender his Trauerſe vnto it.

Difference betweene Trauerſe and arraignment.

The difference then ſtandeth in this, that commonlye, he (whiche is to bee arraigned) commeth in by compulſion of bonde, or Proceſſe, and is touched with matter concerning life and death, or ſome ſuche heynous offence, and pleadeth generallye Not Guiltye to

to the Enditement.

Commonlye I saye, because although hée come in fréelye, or bée endited of some inferiour offence, yet hée maye bée neuertheleſſe arraigned: neyther is hée of neceſſitie driuen to pleade Not Guiltie (whyche runneth to the facte) but maye (if the caſe will ſuffer) pleade a Iuſtification or matter in Lawe, though it bée in caſe of Felonie.

It ſéemeth to haue borrowed the name out of the worde Arraye, which is the pannell, or Iurie, becauſe he that is arraigned, muſte be tryed by them, being fyrſte called, ſworne, and tryed, in order for that ſeruice.

If I ſhoulde rippe vp, and proſecute the whole learning that belongeth to arraignemente, I ſhoulde but *Album agere*, and yet not doe it halfe ſo well as you may elſewhere finde it: and therefore, referring you wholy for that matter to the learned labours of Iuſtice Stanforde, I will onelye offer to conſideration, a poynte or twayne, whereof it ſpeciallye behoueth the Iuſtices of Peace to be aduertized, and then paſſe ouer to determining.

Felonies not triable before *Iuſtices* of the Peace.

The fyrſte thing is, that there bée ſundrye Felonies, and ſome Enditementes of

Felo-

Felonies, the whiche (as it seemeth to me) Iustices of the Peace can not heare, or try at all: the seconde, that in the handling of the verye Felonies wherewith they maye deale, there bee yet certayne considerations peculiar to the Iustices of the Peace only, and not common to them with other Iudges ouer Felonies.

Iustices of the Peace, can not heare the triall of the Felonie for vsing Witchecrafte, or Sorcerie whereby any man is hurt in bodye or goodes: because it is made Felonye by the Statute (5. Elizabeth. cap. 16.) after a former conuiction onelye, the power whereof is not committed to the Iustices of Peace, and so they can take no knowledge of the Recorde thereof, not being before themselues.

Of the same sorte is that Felonie for Forgerie, by the Statute (5. Elizabeth. cap. 14.) after conuiction for a former offence: and that Felonie (after a former conuiction also) for slaunderous speeche agaynste the Queenes Maieste, in offence of the Statute made 23. Elizabeth. cap. 2.

Neyther doeth the hearing and triall of that felonie of a seruant (taking the goodes of his

his maiſter (after his death) belong to the Iuſtices of Peace in the Countrie, becauſe they cannot take notice of his defaulte in the Kinges Benche, by whiche default it firſt beginneth to be Felonie, by the Statute (33.H. 6.cap.1.)

The like, though for vnlike reaſon, is to bée ſayde of the Felonious embeſelling of anye the Recordes of the Courtes at *Weſtminſter*, againſte the Statute 8.Henrie. 6. cap. 12. And of an Acceſſarie in one Countie, where the Felonie was done, in an other Countie, vppon the Statute 2. & 3. Edward. 6.cap.24. becauſe the iuriſdiction ouer theſe Felonies, is not committed to the Iuſtices of Peace, but remitted to other Iudges by the verye ſame Statutes.

Furthermore, they cannot make Triall of ſuche as were endited of Felonie before the Coroners, or, before the Iuſtices of Gaole deliuerie, or of Oyer and Terminer, if the ſame perſons be not Iuſtices of Peace, alſo in the ſame Shire, ſo as the Enditementes be vnderſtode to be taken before the as before Iuſtices of the Peace: for their Commiſsion and auctoritie extendeth only to ſuch as ſtand endited, before themſelues, or former Iuſtices of the Peace, or the Shirife in

his

his Turne.

Thus farre of the first poynt: Touching the second, it seemeth, by Marr. (and M. Fitzh. Fol. 16.) that albeit two Iustices of the Peace, (the one of them being of the *Quorum*) maye heare and trie Felonies, yet no Iustices of the Peace haue auctoritie to deliuer Felons, by proclamation, or without sufficient acquital: nor yet to deliuer such as bee in prison for suspition of Felonie: For they must procede by enquiring, hearing, and determining, as their Commission appoynteth them, and not ridde the Gaole otherwise, as the Iustices of Gaole deliuerie may do. And therfore, such persons, (if they can not bee endited) muste eyther remayne the comming of the Iustices of Gaole deliuerie, as the commune manner now is, or els (being remoued into the Kings Bench) they may be deliuered thence vpon the writ *de gestu & fama* as the olde order was, or by suche other meane as they vse at this daye.

Things seuerall to Iustices of the Peace, in the triall of Felonies.

These Iustices, can take no appeale, of any approuour, nor other, before them, say all the Iustices of the Common Place, 2 H. 4. 19. and so is it clearely holden, 9. H. 4. 1: because their Commission stretcheth not so farre. Whereupon (hauing had no opportunitie to make the search) I am induced to suspecte, that the forme of those Commissions, was (in the last

Assignauimus) different frō these of our time, in that poynt: which (as I haue sayd before) being nowe very large, do giue a great shew to the contrary. But howsoeuer that bee, yet it seemeth no lesse reasonable, thā seruiceable, that if one Felon will accuse an other before them, they may take his confession and repryue him, and thereupon cause the other to be enquired of, and then proceede agaynst him.

Furthermore, they cannot arraigne a man vpon his abiuration, saith Mar.

It hath also bene thoughte vnmeete, that they should try a Felon ỹ same day in which they awarded the *venire facias* against the iurie. 22. E 4. Fitz. *Tit. Coro.* 44. but that hath no necessitie, & the law is now otherwise taken.

Marrow sayth, that they cannot award the writ, *venire facias tot matronas*, to try whether a woman (arraigned before them) bee with childe, or no: but, seeing it standeth with law and reason, to stay hir for the time (that the childe may be preserued) I cannot but doubt of his opinion.

They may giue Cleargie to a Felon, if the Ordinarie or his Deputie, bee present to take him: but if they bee absent, he must bee repryeued, because (as Marrowe sayth) these Iustices can set no fyne vppon the Ordinarie, for his absence: no more, than if he will accepte

one

one to reade as a Clarke, where in truth hée cannot. But if you reade M. Stanforde (lib. 2. ca. 45.) he will perſwade you, that the Ordinarie is not the Iudge, but a Miniſter, in the triall of Cleargie, and that Cleargie may lawfully be giuen & allowed in his abſence.

Of ỹ Fine, for his default at theſe Seſsions, I am doubtfull, as I haue ſayd before: but touching the allowance of Cleargie to the offendor, I ſée no cauſe at all, why it maye not belong to the Iuſtices of Peace as well as to other Iudges, ſéeing that they be Iudges of the felonie, as other Iuſtices are, & otherwiſe all men might be defeated of that priuiledge.

Marrow ſayeth alſo, that if Bigamie (that vngodlye and popiſhe counterplea) had bene alleadged againſt one that prayed his Cleargie, the Iuſtices of Peace coulde not haue written to the Ordinarie to certifie the ſame. But lette that paſſe, as not worth the debating.

And if a man (outlawed of Felonye by Proceſſe before the Iuſtices of Peace) be brought before them, and do alleadge, that he was (at the time of the Vtlawrie pronounced) out of the Realme in the Queenes ſeruice vnder ſuche a Captayne, or that he was then empriſoned in an other Countie: they canne neyther write to the Captayne, nor

into the Countie, by the opinyon of Marrow. Which if it be so, it shall bee good to learne further, what they ought to doe with the prisoner in such a case.

Thus much onely, of thinges restrayning the Iustices of Peace in the Triall of felonies, wherein also they are not now adayes much occupied, the rather because they deferre it till the comming of the Iustices of Assise, by reason that the Statutes (1.& 2.Phil.& Mar.c.13: & 2.& 3.Phil.& Mar.ca.10.) do enioine them, to Certifie at the next generall Gaole deliverie, both the examinations and bondes that they shall take, concerning Felons and suspects brought before them.

This I may adde (not as a restreinte, but for an enlargement of the auctoritie of Iustices of the Peace) that if they see cause, and doe write to the Clarke of the Crowne of the Kinges Benche, for the names of any persons being otherwhere attainted of Felonie by Vtlawrie, or being Clarkes conuict or attainted, he ought (without delaye, and vnder the payne of xl.s) to certifie the same vnto them, togither with the causes of such attainder or conuiction, 34 H.8.ca.14.

Of

Of Iudgement.

CAP. XV.

THe Iuſtices of Peace, hauing thus ſifted and tried ỹ cauſes in hearing, eyther by the euidences gyuen to the Iurie, or by the examination of witneſſes, or by Certificat allowed, or other reaſonable and diſcrete proofe, are now come to make an ende, and to determine of it, For I may wel apply that to hearing and determining, which M. Bracton requireth to the making vp of a true Iudgemēt, that is to ſay, an equal and indifferent acceptation of the perſons: an earneſt examination and thorow ſearche of the cauſe: a true deliuerie of the ſentence: and a diligent execution of the ſame. Of theſe, the two firſte belong to Hearing (or Triall) which we haue alreadye handled: and the latter two be the very parts of determining, wherewith wee haue now to deale. For Iudgement and Execution, doe make an ende of the whole cauſe in controuerſie.

You haue heard before, how M.Fitz. colle-cteth a generall learning out of one speciall case in the Commission, I meane, that if a-ny difficultie doe arise in determination vp-on Triall, the Iustices of Peace are restrey-ned to proceede to Iudgement: and you maye read (6 H.7.16.) that if a *Certiorari* be brought to the Iustices of Peace, they are stayed (by the opinion of Keble) from determination, although the Recorde be not thereby remo-ued from them.

But admitting that there is none impedi-ment, let them proceede to Iudgement.

Iudgemetes by discretion.

The Iudgements of the Iustices of Peace, be in some cases arbitrarie (or referred to dis-cretion) and in other some cases prescribed or limitted. Of the firste sorte, take this one (or two) for all.

He that is orderlye conuicted before them in their generall Sessions, of the deceiptfull getting of anye thing into his handes, by meanes of anye false token, or counterfeyte letter, made in the name of anye other, maye bee adiudged by them to suffer Emprison-mente, standing on the Pillorie, or anye o-ther corporall payne, that they shall ap-poynte, except the paynes of death, 33. H. 8. cap. 1.

And that Seruant, Workeman, or La-bourer

bourer, that ſhall ſo wilfullye and malitiouſlye make aſſault or affray vpon his Mayſter or Maiſtreſſe, or other that then ſhall haue charge ouer him, that he ſhall deſerue further puniſhmente than the impriſonmente of one whole yeare, may be put to ſuche further open puniſhment (ſo as it extende not to life, nor limme) as the Juſtices of Peace in open Seſsions ſhall thinke conuenient, 5. Eliza. cap. 4.

Their preſcribed Iudgementes bée of ſundrie formes, according to the ſeuerall natures of the offences (whereof they haue to iudge) which bée diuers alſo. Preſcribed Iudgements.

For vpon Murders, and other Felonies, they muſt pronounce the vſuall Iudgement of Felonie: vpon ſuch as bée conuicted of Treſpaſſes, Contempts, Riots, and ſuch other offences, wherevppon no certaine forfaiture is layed by Statutes, they muſt adiudge, that they be taken and raunſomed, and ſo to ſatisfie the Queene for their offences, by making their fynes: and vppon offendoures againſt ſuche penall lawes, as doe inflict any certayne payne, they oughte to adiudge as the Statutes themſelues doe directe their courſe.

For, vpon conuiction of the firſt offence, againſt the Statut of forſtalling (5. E. 6. ca. 14.) Forſtalling.

they must awarde, imprisonmente for two moneths without Baile or Mainprise, and the forfayture of the value of the goods so had: vpon the second attainder (or conuiction) such imprisonment for sixe moneth, & the double value of the goods: and vpon conuiction of the thirde offence, they must giue sentence that the offender bee set on the pillorie, and to forfaite all his goods, and further to haue imprisonment of his bodye during the Queenes pleasure.

Conuey sheepe,

Against him that shall bring, or procure to bee brought, into any shippe, any kind of sheepe, being aliue, to be conueyed out of any the Queenes dominions, they ought for (the first offence) to adiudge, that hee shall lose all his goods to the Queene, and suffer imprisonment by the space of one whole yeare, without Baile or Mainprise, and that at the yeres ende he shall (in the ful market of some market towne) haue his left hand striken off, and nayled vppon the openest place of suche Market, 3. El. ca. 3.

Taking of Deere, or Lwkes, &c.

Against him, that is conuicted for the vnlawfull taking, or sleating, of any Deere, or for such taking of any Hawke, or Egges of Hawke (contrary to the Statute 5. El. ca. 21.) they must adiudge treble damages to the partie grieued, three moneths imprisonmente of

of the body of the offendour, and (after that expired) to finde ſuerties of his good behauyour for ſeuen yeares after, or elſe to remayne in priſon vntill he ſhall find ſuch ſuerties during thoſe ſeuen yeares.

And vpon Certificat made at ỹ nexte quarter Seſsions of the Peace, by two Iuſtices of the Peace (the one of them being of the *Quorum*) againſt him that ſhall obſtinately kéepe an Alehouſe, contrarie to the Statute (5. E. 6. ca. 25.) the Iuſtices of the Peace (oughte in the open Seſsions) to aſſeſſe the fine of twentye ſhillings: the which I do purpoſely rehearſe, becauſe they are there warranted to Aſſeſſe the fine, without proceſſe firſte made againſte the offendour, vnlike to the common order of aſſeſſing fines, as you ſhall ſée when I come to that matter. Alehouſe.

It were more labourſome, than profitable, to runne ouer the diuerſe Iudgements that Statutes doe appoynt, and it may ſuffiſe in this place to haue giuen this taſt of theſe few, and therfore I will in hand with Execution.

Of

Of the *Processe* for the Fine of the *Queene*, and of the assessing thereof: and of *Estreating* for the *Queene*.

Cap. xvi.

Seing that Execution is but a performance of the Iudgemente, I shall not neede to make longe numeration of the sortes of Executions, which are within the power of the Iustices of Peace. For, besides that by the knowelege of the one, the other is knowne also, the Iustices of the Peace themselues haue in manye cases performed their duetie in both, when they haue in the one pronounced that whiche is due to the offendour.

Execution, for the Queene.

Howbeit, for as muche as that whiche they are to doe by waye of Execution, offereth profite, eyther to the Queene, or to her subiectes: and that whiche pertayneth to the Queene, is broughte aboute, eyther mediate-

mediately, firſte by Proceſſe (or Impriſonment) for the Fine, then by Aſſeſsing of the Fine, and laſtlye, by Eſtreating the ſame: or elſe immediatelye, by Eſtreating of the penaltie and forfeyture: I will firſte beſtowe a fewe wordes vppon the Fine and Eſtreates for the Queene, and then ſpeake of the benefite that belongeth to the ſubiect.

Where the Conuiction is for Treſpaſſes againſt the Peace, Riots, and ſuch other Contempts and offences againſte the Commiſſion or Statutes, for the which no certaine Fine is appoynted: there (as you haue ſeene alreadie) the iugdement is, That the partie ſhall be taken to ſatiſfie to the Queene hir Fine And therevppon, the *Capias pro fine*, and (if the partie cannot be founde) other Iudiciall Proceſſe goeth out, till he be Utlawed: vnleſſe it be in a very fewe caſes, where by the wordes of the Statutes themſelues they may proceede to aſſeſſe the Fine in the abſence of the parties, without calling them by any Proceſſe: for, ſo it ſtandeth in the Statute of Alehouſes. 5. E. 6. cap. 25: (as I tolde you euen now) and in the Statute of High waies, 5. El. cap. 13.

But if the partie be brought in, then is hée a priſoner, and then are the Iuſtices of Peace (by

(by their discretion) to asselle the Fine, and to estreate it, and deliuer him.

For in no case (as I take it) canne they of themselues leauie any Fine, or forfeiture, due to the Queene: insomuch as not they, but the Shirife, is accomptant for all such matters.

Imprisonment. The imprisonment that I speake of, is only to the ende that the Prince maye haue the Fine: and therefore, vpon the payment thereof (or vppon pledges found by Recognusance to pay it) the offendour ought to be deliuered, 2. Mar. Brooke Imprison. 100.

Difference betweene Fine, & Amercement. Hereof also the Fine toke firste his name, of the Latine *Finis*, because it maketh an end with the Prince, for the imprisonment for the offence committed against his Law,

And in that respect chiefly, doth it differre from an Amercement: For when the offendor hath not so deepely trespalled, that therby he deserueth any bodily punishment at all (as if he be *nonsuit* in an action, or do commit any such like fault) he is sayd to fall into ỹ Kinges Mercie, because he is therein mercifullye to be dealt with: and by the Great charter, (ca. 14) thah Amercement and summe of money which he is to paye for the same, ought to be asseased and affered by the good and lawfull men of the neighbourhode, which also Glanuil. lib. 9. cap. 11. affirmeth to haue bene the

Law

Law of the lande long before that time, saying, *Misericordia Domini Regis est, qua quis per iuramentum legalium hominum de Vicineto, eatenus amerciandus est, ne aliquid de suo honorabili contenemẽto amittat.* But where the offence or Contempt falleth out to bee so great, that it asketh the imprisonment of the bodye it selfe, and that during the Kings will and pleasure: then is the partie to redeeme his libertie with some portion of money, as he canne best agree with the King or his Justices for the same, whiche composition, is properly called his Fine, or his Raunsome, in Latine *Redẽptio*, as may be playnly seene by the Statute of *Marleb.* 52.H.3.ca.1.2.3. & 4 and by the Statute called Ragman, and diuerse other auncient Statutes. But of later time, the Justices themselues haue in some cases of Amercements also, vsed to assesse and rate the same without any other helpe: As where the Officers of their Courtes haue offended, 33.H.6.54.34.H.6.20. & Lo. 5.E.4.5. which also seemeth to make an other differẽce betweene the two words. But because neither of these be strictly obserued either in common speeche, or in the vnderstanding of the latter Statutes, I will no longer stand vpon it.

Fine, by discretion of the *Iustices.*

Nowe then, if the offence be Fineable, by generall wordes onely, without speaking of any

any Fine, or without shewing by whome the Fine shall be assessed (for so it is commonly in the elder Statuts that do prohibite any thing to be done) there the assessement thereof belongeth to the Iustices before whom the Conuiction is lawfully had.

Again, if it be Finable by these (or such like) wordes, At the Kinges will. or At the Kinges pleasure (as you shall find it in many Statuts) then also the same Iustices (before whom the Conuiction was) shall assesse the Fine at their willes and pleasures: For (saye the Bookes, 2. R.3.11: & 18.H.8.1.) the King (in all suche cases) vttereth his owne will and pleasure, by the mouthes of his Iustices.

And yet some Statutes (vsing playner speeche) do namelye referre the Fine to the discretion of the Iustices of Peace.

Destroy the Fry of Fishe.

For, they maye (after Conuiction before them) Fine by their discretions suche as take Salmons, or destroy the Frie of Fishe in Riuers, against the Statutes, W.2.cap.47: 13. R.2 c.19: & 17.R.2.c.9. And as this is sayde of the Fine, so sundrie Statutes doe giue the same power to the Iustices of Peace, in the execution of the corporal punishment it selfe: as you haue alreadie heard in the case of counterfeiters of false letters or tokens, and may reade in other the Statutes at large. For, I labour

labour to be shorte, and therefore I giue but an allaye of eche thing, knowing that these Iustices will not proceede to the execution of any Statute without the sight of the Statute it selfe, howsoeuer they should finde it alleaged by me.

And in these cases (euen as in cases of Amercements) the Iustices ought to take heede that the Fines be reasonable and iuste, hauing regarde to the quantitie of the trespasse, and the causes for which they be made, as it is cõmaunded by the Statute, 34. E. 3. ca. 1.

Fine, to be assessed openly.

But this Fine (or paine) awarded by the discretion of the Iustices of Peace, shall do the more good, both to the Prince in profite, to the people in example, and to the Iustices themselues in credite, if it be pronounced at the Benche openlye (as it oughte to bée) and not shuffled vppe in a Chamber (or Corner) secretelye, as in some places it hath bene vsed to bée.

Mitigation of the forfeyture of a Statute.

I haue heard, that euen in cases where the Statutes doe appoynte a certayne forfeyture (as fiue poundes, or tenne pounds &c.) yet the practise is, to mitigate the same by discretion, if so be that the partie will come in and put himselfe *in gratiam Reginæ*, withoute playne confession of the faulte, as I haue told you before. So that the Fine shall bée small, where

where the fault was greate, and the penaltie of the Law it selfe not small.

But this maner of doing is (in my minde) so voide of sounde reason, that I cannot recõmende it to the Iustices of Peace, but doe rather condemne it as a mockerie of the Law: Yea I finde, that sundrie Statutes (fearing belike some suche thing) haue specially preuented it, commaunding that Iustices of the Peace shall assesse no lesse Fine, than is in those Statutes themselues before hande appointed.

Suche is the Statute (17 E.4.cap.4.) of Tiles: the Statute (33. H.8.ca.6.) of Crossebowes and hand Gunnes: and the Statute (5.E.6.ca.25.) concerning Alehouses: and such others may be found, if the Books of Statuts be well perused.

Estreating for the Queene.

But hitherto we haue not sufficiently performed that, which the Commission of the Peace hath in these wordes, *Saluis nobis amerciamentis, & aliis ad nos inde spectantibus:* and therefore, it is not ynough to haue assessed the Fine, but we must also disclose the meanes, by which, as well this Fine that is reduced to certaintie by the discretion of the Iustices as all other Amercementes, & those other penalties and forfeitures also that are certainly prefined by words of the Statutes, may

may be leuied and brought into the Princes coffers.

Order was taken by an auntient Statute, (intituled *de Scaccario*, and noted to be made 51.H.3.) that al Iustices, Commissioners, and Enquirers whatsoeuer, should deliuer into the Eschequer (at the feast of S.Michael yerely) the extracts of Fines and Amerciaments, tared and made before them, that the King might be duely aunswered thereof. And the same in effect was afterwarde confirmed by an other Statute, entituled, *De forma mittendi extreta ad Scaccarium*, whiche although it be sayd to be made 15.E.2. Yet forasmuch as it mentioneth that the former Statute was made in the time of ỹ father of the same King which made the later, it must nedes be, that either the one or the other of them was made in the time of King E.1.

No doubt, but this ordinaunce doth extend to the Iustices of Peace, as a man maye easily gather by wordes in the Statute of Labourers 5.Elizab.ca.4: and by the acte of Sewers. 13.Elizab.ca.9. and other Statutes: But because it is verye generall, and hath nothing peculiar vnto them from other Iustices, I will descende to lower times, and loke there for nearer helpes.

The Statute (12.R.2.ca.10.) had allowed

to euery Iuſtice of the Peace foure ſhillings by the daye, for the tyme of their Quarter Seſsions, to bée payed (by the hands of the Shirife) of the Fines, and Amerciamentes commiug of the ſame Seſsions. But, becauſe it was ſone after ſéene, that it was a great delay to the Iuſtices of Peace in this paymente, to erpecte the leuying of theſe Fines and Amerciamentes by Eſtreates, firſt ſent vp to the Eſcheaquer, and thē deliuered thence to the Shirife (which was at that time the common maner of leuying Fynes and Amerciamentes) therefore it was within two yeares after (*videlicet* 14.R.2.cap.11.) prouyded, that the Eſtreates of the Iuſtices of Peace ſhoulde bée indented (or doubled) and the one part thereof deliuered by them to the Shirife, to the intent that he maye leuie the money thereof riſing, and paye the Iuſtices their wages by Indenture betwéene him and them to be made, and the Barons of the Eſchequer maye charge and allowe him vpon the making of his accounte accordingly.

And hereby (as I thinke) the Eſtreates of the Iuſtices of the Peace bé nowe an immediat warrant for the Shirife, to leuie, not only the Fines and Amerciamentes, but alſo all other Iſſues, Penalties, Loſſes, Forfeitures, and

and Summes whatsoeuer, arising before them: for the wordes of the Statute are generall, The money thereof arising, and therefore whatsoeuer summes are to be Estreated into the Eschequer, the same are also to be leuied by the Shirife.

Suche order did the Statute (33. H.8. cap. 10. of the fiue weekes Sessions) take, for the leuying as well of Fines and Amerciamentes, as of Peines, Losses, and Forfeitures of money: So doeth the Statute of Tillage (2. & 3. Phil. & Mar. cap. 2.) by way of admittance rehearse, that Iustices of the Peace maye make out Processe for the leuying of Fines and Forfeitures before them selues: and so are the Estreates made, and the Fines and Forfeitures thereby leuyed, at this presente time, if I be not deceaued.

And these are properly called Estreates, of the worde *Extracta*, because they be shorte Notes (or Memorials) extracted (or drawne) out of the Recordes, by the Clarke of the Peace, and by him indented and deliuered sunderly, to the Shirife, and to the Barons of the Eschequer, bearing this (or the like) Title, *Extract. finium, & amerciamentorum foris factorum, ad generalem Sessionem Pacis,*

tentam apud Maidstone, &c. Coram, &c. For the whole forme of the making wherof, there is full direction giuen to all Clarkes of Estreats, by the Statute, 7.H.4.ca.3. Whereonto I referre them.

Iustices of the Peace ought to haue care of Estreates.

Howbeit, I doe not thinke that in our case, this dutie of Estreating is so peculiar to the Clarke of the Peace, but that the Iustices of the Peace themselues, ought also to haue a common and carefull eye vnto it: For (if you remember) it is both specially prouided for in the Commission, and also an Article of their Oath, to see vnto the faythfull Entrie and Certificat of the Issues, Fines Forfeits, and Amerciamentes, that doe happen before them: And therefore, it were well done (in mine opinion) if the Iustices would, by turne (or otherwise) both take knowledge of things that haue passed before them, and also take order that the same be certified accordingly: least otherwise it lie altogither in the power of the Clark of the Peace, to Saue or Slay (as one sayd) the Sparrow that he holdeth closed in his hande.

Of

Of Executorie *Processe*, & execution for the parties that sue, or for other persons.

CAP. XVII.



Albeit that the Iustices of Peace haue this power, to make warrant for leuying the Amerciamentes, Fines, and other forfeits, that doe growe vnto the Queene by their seruice: yet is it commonly thought, that they may not, (but in some cases onlye, and that by speciall speeche of the Statutes) make execution (eyther for him that will sue, or for any other) of suche parte of the forfeyture, as the law doth afford them.

For (most commonly) the partie that will sue is put to his Action at the Common lawe for recouerie of that which he is to haue: as, for his moitie of a forfeyture agaynste the Statute (24. H. 8. ca. 13.) of apparell, he is perhappes driuen to his Action of Detinue: for his moytie growing vppon conuiction of anye offence, contrarye to the Statute (13. Eli. Apparell.

Elizab.cap.14) concerning bringing ouer of Bowstaues, or contrary to the statute of Musters. (4.& 5.Phil.& Mar.ca.3.) hee is to commence his Action (or Bill) of Debt: and so of sundry others, that are ech where to be found. But where they haue power, either by their Commission, or by any Statute, to heare and determine anye cause at the sute of a priuate person, I doe not see how the cause can wel be said to be fully determined till the complaynant hath had the effect of his sute, which can not be without execution.

Bowstaues. Musters.

Doubtlesse, by speciall prouision, made in the Statute (5.E.6,ca.14.) againste Forestallers, the Iustices of the Peace may make execution of the one moitie of the forfeiture for him that sueth, by *fieri facias*, or *capias*, as the Queenes Iustices at *Westminster* vse to doe.

Forestallers.

The like power, in like wordes haue they, for leuying ỹ moitie of any forfeiture, against the Statute of Armour, made 4.& 5. Phil.& Mar.ca.2 or against the Statute (made 5.Elizab.cap.12.) concerning Badgers, Drouers, &c. and their licences.

Armour.

For the moitie, growing to the Informour vpon the Statute of Liueries (8. E. 4. cap. 2.) they shall make suche execution, as oughte to be had in Recoueries of Det, or Trespasse, at his owne pleasure.

Liueries.

They

They maye also awarde execution for the partie that sueth, vpon the Statute of Flaxe and Hemp (24.H.8.ca.4.) by such Processe as to them shall seeme by their discretion. Flaxe and Hempe.

And the Estreates (made by the Clarke of the Peace) of forfeits for defaultes of amending Highwayes, are a sufficient warrant to the Constables to leuie the same by Distresse to the vse of the Churchwardēs of the Parish where the default was, towardes the amendment of the sayd wayes, 2.& 3. Phil. & Mar. ca.8 : & 5.Elizab.ca.13. Highwayes.

And likewise, the Estreates of the Iustices of Peace (of any Fines assessed by them vpon Presentmentes in the Shirites Turne) being inrolled, indented, & deliuered to the Shirife, are a good warrant vnto him to leuy the same to the vse of him that was Shirife at the time of such Presentments taken, 1.E.4.ca.2. Shirifes Turne.

Searche maye afforde you some moe examples, but these maye suffise for my desire, which is not (in this, or any other) to recounte all, but to make good proofe of that which I offer and propose,

Of

Of Certifying the *Records* of the *Seſsions* of the Peace, to other Courtes, or Officers.

Cap. xviii.

AS we haue alreadie manifeſted, that Iuſtices of the Peace haue not a ſufficiente and thorow power of themſelues to heare and determine al cauſes wherof they haue in their Seſsions auctoritie to enquire: So alſo be there ſundry things determinable before them there, which neuertheleſſe may (in ſome reſpectes) be brought to a ſeconde handling: either to the ende to reuerſe that which they haue done, or that their doinges may be an euidence and teſtimonie in the tryall of cauſes, before other Iudges.

And becauſe this cannot in any ſorte be performed, withoute the preſence of thoſe former Recordes (or the tranſcripts thereof) which doe remayne with the Iuſtices of the Peace, it is therefore requiſite, that they doe

doe make Certificat of them vnto those other Courts, or officers, that shall be interessed to vse the same.

But, as this Certificat ought in some cases to be made by the Iustices of the Peace, (or their Clarke) without any writ of *Certiorari* therefore directed, and in some other cases they maye spare to Certifie vntill that Writte or some other commaundemente be brought vnto them: So also sometimes they are to certifie and send vp onelye a Tenor (or Transcript) of the Recorde before them, and sometimes the very Recorde it selfe must be conueyed from them.

Certifie without the writ of *Certiorari.*

The Clarke of the Peace must (vnder the paine of xl.ℓ.) certifie into the Kings Benche, a true transcript of euery Attainder, Utlawrie, and Conuiction (had before Iustices of the Peace in any place, except *Wales*, *Chester*, *Lancaster*, and *Durham*) within 40. dayes after, if it be then Terme, and if not, then within 20. dayes after the beginning of the nexte Terme, that the same may there also appeare of Record to be vsed as that Statute hath appointed if there be cause: and he muste also delyuer to the Ordinarye a Transcripte of Clarkes conuicted, or attaynted, before the sayd Iustices, 34. H. 8. c. 14. But enquire whether this last be needefull at this daye, by rea-

son that Clarkes, be not now deliuered to the Ordinarie, by the Statute. 18.El.ca.7.

And if a principall be attainted of murder, or felonie in one Countie, whervnto an other is accessarie in an other Countie, then vpon writing from the Iustices of Gaole deliuerie, or Oier and Terminer, to the *Custos Rotulorum* (where suche principall is attainted) he must certifie in writing vnder his Seale to the sayd Iustices, whether suche principall be attainted, or otherwise discharged, or not, that they may procéede therevpon to the triall of the Accessarie, 2.E.6.ca.24.

But in cases where Iustices of the Peace haue power to receiue Enditementes, and no power to procéede anye further vpon them, (whereof you haue alreadye the examples, in the seuenth Chapter of this second Booke) there they oughte to sende vppe and certifie the Enditements themselues, and that of duetie (as I thinke) without anye *Certiorari* commaunding the same: because, hauing none auctoritie to heare and trie the offences, the Recordes thereof shall bée vnprofitable before them, and therefore they canne haue no iust cause to reteine them: and yet (for the more suertie) it is speciallye commaunded (by 5.El.ca.1.) that they shal certifie the presentmentes of some offences agaynste that

that Statute.

And so, if a man (bounde to kéepe ỹ Peace) doe make default of apparaunce at the next Quarter Sessions, the Recognusance it selfe (togither with the Recorde of that default) must be certified into the Chauncerie, Kings Benche, or Excheaquer, that execution vppon the Recognusance may bée had there. 3. Henri. 7. cap. 1 and so ought it (as I thinke) if it bée presented that the partie hath forfayted his Recognusance by breache of the Peace: And likewise if it bée presented before them, that the chattels of a man attainted of Felonie, bée in the hands of an other. For, in these, and suche other cases, where they cannot of themselues procéede, they oughte to sende the Recordes to suche as haue auctoritie to determine vpon them, and otherwise they doe not discharge that duetie, which the wordes *Saluis, &c. & alijs ad nos inde spectantibus*, in the Commission doe séeme to expecte at theyre handes.

Furthermore, the Statute of Purueyours (2. & 3. Phil. & Mar. cap. 6.) doeth appoynte the Iustices of the Peace, to certifie to the Treasorer of the Queenes housholde, the Dockets of Purueiors (brought to their Sessions by Constables) that the seruing of such Com-

Commissions, and the true aunswering of purueyaunces, maye be the better examined thereby: and although it maye be doubted, whether these be Recordes, or no, yet for that they are to be certifyed from the Sessions of the Peace, I sticke not to afoard them this place. And if you will also repute in this number, the Licences (and such other actes of that kinde) which passe at the Sessions of the Peace, I will not be agaynst it.

Certiorari. Touching the *Certiorari*, if it bée made accordingly, that is of force to remoue not only Enditements, or other executorie Records, wherein the Iustices of Peace canne goe no further, (and whereof I haue spoken already) but also the Recordes of causes, fullye and lawfully heard and determined by them, to the ende that they maye be reuersed and annulled in the Kinges Benche, if good matter and cause doe so require.

For that preheminence hath the Kinges Benche, as you may sée by proofe: yea, all other the higher Courtes, maye write to the Iustices of Peace, to certifie their Recordes that doe make for the Triall of causes hanging in them, as you may reade 19.Hen.6.19. where they of the Commune Place, did send to the Iustices of Peace for an Enditemente, bicause in a writte of Conspiracie, (brought

before

before them) it was materiall to haue it.

And yet, neyther they of the Commune Place, nor Kinges Benche, doe vse to write for Enditementes, or such other Records, vnlesse they be therevnto enduced by cause hanging in their owne Courtes before them, For, otherwise the righte waye to remoue them, is by *Certiorari* out of the Chauncerie, from whence they maye be transferred (by *Mittimus*) to any other Court, 41. lib. Ass. Pl. 22 Knyuet Chiefe Iustice.

Howbeit, a man may gather vpon ỹ Bookes (1. R. 3. 4.) that if any Record be sent vp without warrant to such a higher Court, they may there proceede vpon it, bicause it is a Recorde in that Court, and that Court is the Court of the Queene, as well as the other.

Of the generall, (or Quarter) *Sessions*, of the Peace.

CAP. XIX.

WE haue hitherto laboured, and at the lengthe runne ouer, sundry things, which (in the opinyon of some men) bee commune to all Sessions of the

the Peace: And yet, because there be also certaine thinges (as it seemeth to mée) appropriated, some to anye, and others to some one, of the generall Sessions, it remayneth that we nowe distinguishe the Sessions of the Peace, and enter into consideration what is a generall, and what a speciall Session.

The generall Sessions.

The generall Sessions of the Peace bée those, which are prouided for the generall execution of the auctoritie of the Iustices of Peace, whether you respect the limits of the place, within their Commission, or ỹ bounds of power proceéding from the Commission and Statutes. For at these Sessions (as sayth M. Fitzh.) generally all thinges ought to bée giuen in Charge that do lye within the auctoritie of these Iustices to be determined.

These bée moreouer called the Quarter Sessions, bicause they bée holden Quarterly, or foure times in the yeare: and the Statute (4.H.7.ca.12:) tearmed them principall Sessions, for that in them cheefely the power of Iustices of the Peace doeth shine and shewe it selfe: in which respect, some other Statutes doe giue them the name of open Sessions also.

But we shall not néede to dwell vpon the names, whereof there can bée no greate controuersie,

trouersie, seeing that they all doe ayme at one marke: rather (because these generall Sessions be at this day diuersly summoned, begon, and continued, in diuers parts of the Realm) it lieth fitly in my way, to make examination of that diuersitie in this doing.

For (to beginne with the Summons) the manner is (in some Shires) to summon yearly six standing Sessions of ỹ Peace, in others 8. in others 12. or 16. & in others otherwise. All which is done, chiefly vppon pretence to ease the Inhabitantes of the Countie, for whome it woulde otherwise bée verie paynefull to trauaile so often from all the partes of the Shire to any one place of the same. How many *Sessions.*

And therefore, such as doe mayneayne 6. or 8. Sessions, doe vse to Summon all the whole Shire to a couple of them, and to the residue they call onely such partes of the Shire, as they doe therefore specially appoynt: But yet so, that (vpon the reckonjng) eache corner of the Country giueth attendaunce at foure seuerall Sessions: which also falleth out accordingly in those Shires where they haue 12. or 16. Sessions: for albeit that they doe not at any one time summone ỹ whole Shire to any one place (as ỹ others do) yet, diuiding their Shire into 3. or 4. partes, and kéeping foure seuerall Sessions in eache of those partes, they also (as

(as well as the other) doe serue their whole countrie with foure sundrie Sittinges. And therefore (in mine opinion) although none of these doe followe the precise letter of the lawe, which requireth but onely foure quarter Sessions in any Shire, yet euery of them draweth neare to the true meaning of the law, which loketh for nothing else but that the Courte of these Sessions shoulde yearelye bee foure tymes opened for the whole Countie.

But if there bee anye that doe (for this purpose) diuide their Shire into halfes, and doe holde onelye foure Sessions in the yeare, that is to say, two in the one parte, and two in the other, calling the one halfe of their Hundreds to those two Sessions at the one place, and the other halfe to the other two Sessions holden at the other place. These men (as some haue thoughte) doe neyther reteyne the letter, nor attaine the meaning of the lawe, in this their doing. For, vppon the matter, no part of their Shire hath anye moe than two Sessions: which manner, who seeth not how much it may hinder Iustice.

And although that they will peraduenture seeke to salue it, in saying, that they doe call the Constables of the whole Shire to euerye of those Sessions: yet they can not so escape: for,

or, both reason it selfe, and their owne experience herein, doeth informe them, that it is likelye, they shall haue moe presentmentes, where moe persons (that can presente of their owne knowledge) be assembled, and doe take the charge vpon them.

Besides all which, these men doe not bring ease, but trauell and delaye to their countriemen, whom by this meane they compell, eyther to go far (out of one parte into another) to haue a faulte punished, or else to tarrie for helpe till a Sessions shall be kepte in that parte where they inhabite.

Neither may I well omitte, that this doing may breede danger to the Iustices themselues, whilest any of them (hauing taken a Recognusance of a Tipler) doth not certifie it vntill the Sessions happen to be in his owne parte, and in the meane season, the nexte Sessions of the Peace (within the shire) chanceth to be holden in the other parte: whereof what may follow, the Statute (5. E. 6. ca. 25.) will tel you, and teache them. And like fault is it (though not like forfeite) so to reteyne a Recognusance taken for the Peace, as you may see by the Statute, 3. H. 7. ca. 1.

Thus much of the summons (or number) of these Quarter Sessions: Nowe followeth the time in which they oughte to be holden,

The times, of holding the Quarter *Sessions.*

aboute the whiche also all Counties doe not agree, and therefore, it shal be good (before other things to peruse those Statutes, which do (eyther in deede, or shewe) concerne this poynt.

The Statute 25.E.3.ca.8. ordayned thus: Item that the saide Iustices make their Sessions in all the Counties of *Englande*, at the least, foure times in the yeare; *viz.*

At { The Annuntiation of our Lady:
Saint Margaret:
Saint Michael: and
Saint Nicholas.

The Statute 36.E.3 ca.12. sayth, That the Commission of the Peace shall make mention that the *Sessions* shall be holden thus:

{ Within the *vtas* of the Epiphanie:
Within the second weeke of Lent:
Betweene Pentecost and Midsommer:
Within the *vtas* of Saint Michael.

The Statute 12.R.2 ca.10. doeth afterwarde set the matter at libertie, saying, They shall holde their Sessions in euerye quarter of the yeare at the least: But they of *Middlesex* be excepted by 14.H.6.ca.4.

Lastly

Lastly the Statute 2. H. 5. ca. 4. doth reduce the times to certaintie agayne, saying thus:

Ouer all the Realme the *Sessions* shall bee,

In the first weeke after
- Sainct Michael,
- The Epiphanie,
- The clause of Easter,
- The translation of Sainct Thomas the Martyre.

The first of these foure Statutes, doeth (in shewe, and in commune opinion) concerne the Sessions of the Iustices of Peace, but in trueth it belongeth not at all vnto them: for it was made to directe the Iustices of Labourers in the times of holding their Sessions and they were not Commissioners of the Peace, but speciall Iustices for the causes of Labourers alone, not resiaunte in the Countrey, but sente downe for the tyme of that seruice, as it may expresselye appeare, not onelye by the Preamble and all the partes of the sayd Statute it selfe, but also by the Statutes 28. Edward. 3. cap. 5: 31. Edward. 3. cap. 6: & 34. Edward 3. cap. 11. during all which time also, the Wardeins of the Peace were neyther called Iustices by any Statute, nor auctorised to deale with Labourers. For in 34. Edward. 3. cap. 1. they are called Wardeins, and the first name

of Iuſtices of the Peace by anye Statute (that I haue ſéene) is founde 36. Edward.3. cap.12. before mentioned, where it is ſayd thus, In the Commiſsions of Iuſtices of the Peace, and of Labourers, expreſſe mention ſhall bee made, that they ſhall holde their Seſsions, &c as before. And as for the auctoritie ouer Labourers, that was firſte appoynted to Iuſtices of the Peace by the ſtatute 42. Edward.3. cap.6. in the fourthe Chapter of whiche ſayde ſtatute, there were certayne Commiſsions diſlyked (of whiche I beléeue that of the Iuſtices of Labourers was one) and order taken, that from thencefoorth ſome of the Iuſtices of the one Benche or other, or Iuſtices of Aſsiſe, or Iuſtices of the Peace with other of the moſt worthye of the Countrie, ſhould be named in all Commiſsions of Enquirie. So that we haue not to doe with the Statute 25. Edward.3. ca.8. and may therefore proceede to examine the reſt that follow.

The next is, the Statute 36. Edward.3. ca. 12. But neyther that maketh anye Lawe for holding the Seſsions of the Peace at this day, as well becauſe it was ſet at large by 12. R.2. ca.10. as alſo (if it were not) becauſe the Cõmiſsions of our time, vſe no ſuch mention as it commaundeth.

Then

Then come wée to 2. Henri. 5. cap. 4. which reſtrayneth the libertie of 12. Richard. 2. cap. 10 and reduceth the times of theſe Seſſions to certayntie againe: and yet ſo, that the one of theſe Statutes doeth not frette the other, for the latter is an expoſition of the former, ſo that it is all one as if they both had bene but one Lawe, and ſhoulde haue ſayde, That the Iuſtices of Peace ſhall holde their Seſſions in euerye quarter of the yeare at the leaſte, namelye, in the firſte weeke after Sainct Michaell, in the firſte weeke after the Epiphanie. &c.

Nowe, to proue that the Quarter Seſſions of the Peace were holden after the preſcript of this Statute (2. H. 5. ca. 4.) vntill the time of the Statute, 5. Eli. cap. 4. theſe be my warrants.

Firſt, M. Marrow ſayth plainly that in his dayes the Quarter Seſſions were ſo holden.

Secondlye, for as much as there canne be no higher auctoritie of expoſition than to conſtrue one Statute by an other, I will ſhewe you ſome Statutes alſo that haue accounted of theſe Seſſions to be holden accordingly.

At the Generall Seſſions after the feaſt of Sayncte Michael, the *Cuſtos Rotulorum*, or (in his abſence) the eldeſt of the *Quorum*, oughte

to appoynte two Iustices of the Peace for the ouersighte and controlment of the Shirifes, and their Clarkes &c. by the Statute 11. H. 7. cap. 15.

And at the generall Sessions holden at Michaelmas, the Iustices of Peace ought to appoynte Searchers for Brasse and Pewter, by the Statutes, 19. Henri. 7. cap. 6: & 4. Henri. 8. cap. 7: where the worde (At) must of necessitie be vnderstode for (After) whether you will take it according to the sayde Statute 2. Henri. 5. cap. 4. whiche sayth playnly (After) or according to 36. Edward. 3. cap. 12. which sayth Within the *Vtas* of Saincte Michaell, seeing that the *Vtas* (as euery man knoweth) is alwayes after the feaste, and not before it.

But (to prowe two at once) whereas the Statute 27. H. 8. ca. 5 had taken order for Iustices of the Peace to be made in *Cheshire*, and certayn other shires, and had willed that they should be sworne to the képing of their Sessions of the Peace &c. as other Iustices of the Peace in other the Counties of *Englande* were, it fell out, that the Gentlemen and freeholders of the Countrie of *Cheshire*, were much troubled by attending yearely, both at the saide 4 quarter Sessions. and also at 8. or 9. Countie Courtes which they had besides, &

there-

therevpon it was prouided (by another Statute 34.H 8.ca.43.) that the administration of Iustice (before time vsed in the sayd Countie Courts) should from thencefoorth be done and executed at two times in the yere only, that is to say, at the Sessions next after the feast of S. Michael, and at the Sessions next after Easter yerely for euer.

I might adde, that the quarter Sessions in the weeke next after the Clause of Easter, was tyed to the Tuesday of that weeke, by the statute 33.H.8.c.10. And that it was not without some graue consideration, that the Statute 2.H.5.c.4. didde commaunde the Sessions of the Peace to be holden ouer all *Englande*, in one and the selfsame weeke: But I thinke it clearelye ynough proued, that hitherto these quarter Sessions oughte to be directed by that statute: and therefore I will descend to the statute 5.El.cap.4. and weigh the time in which they ought to be holden at this very daye.

The woordes of that statute be these: As much of all the Statutes heretofore made, & euery e braunche of them, as touche or concerne the hyring, keeping, departing, working, wages, or order of Seruauntes, Workemen, Artificers, Apprentices, or Labourers, or anye of them, and the penalties

and forfeitures concerning the same shal be repealed & vtterly voide & of none effect: And that all the sayde Statutes, and euerye braunche thereof, for any matter contayned in them, and not repealed by this Statute, shall remayne and be in ful force and effect, anye thing in this Statute to the contrarye notwithstanding.

Vpon this Statute some haue thought, that the said Statute, 2.H.5.cap.4 is repealed cõcerning the braunche of the Sessions: And others do thinke the contrarye: and therefore lette vs holde the beame, and put in balaunce their reasons on either side.

They of the one side doe alleadge, that this braunche of the Sessions lyeth in the middest of that Statute (2 Henri. 5.) whiche was made for Labourers, and that it was meante only of Sessions to be holden for the order of Labourers, and so is within the wordes of repeale.

And they saye also, that it will fall oute vnseasonablie, to holde the Sessions (especiallye that after Michaelmas) according to this Statute, bicause the same happeneth verye neare to that tearme of Sainct Michaell, whereat the presence of manye is no lesse requisite, than at the Sessions of the Peace.

They

They, on the other side, doe gather vppon the sayd words of 5. El. cap. 4. that some parts of the Statutes of Labourers must néeds remaine in force, notwithstãding those words of repeale: for otherwise (saye they) the makers of 5. El might (with lesse labor of speech) haue repealed them al at once.

And therefore they say, that two Statutes of Labourers, (*viz.* 12. R. 2. cap. 3: and 23. H. 6. cap. 13.) bée yet in force, for so muche of them as doth concerne Victuallers: and lykewise, that so much of this Statute, 2. H. 5. cap. 4. as doth concearne the resiancie of those Iustices of the Peace which be named of the *Quorum*, and the holding of the Quarter Sessions, is vnrepealed also: for that that they concerne not the hyring, kæping, &c. or order of seruants, &c. (which might be done without the Sessions of the Peace) but the generall seruice of the Commission and statutes that doe auctorise the Iustices of Peace, whereof also these Sessions be called the Sessions of the Peace.

And it is not newe (in their opinions) to fynde a generall ordinaunce in a particular statute: as in the statute 38. Hen. 8. cap. 39. made specially for the erection of the Courte of Suruevours, there is a generall Lawe, that all Obligations concerning the Kinges

commoditie, shall be made to himselfe by the words *Domino regi, &c.*

Neyther was there euer (saye they) anye quarter Sessions holden (onelye for the causes of Labourers) by the Iustices of Peace although the petite Sessions of Constables were chiefly bent to that seruice.

And that the sayde Statute 2. Henri. 5. did meane the very Sessions of the Peace, and no other, they offer to proue by the authoritie of those selfe same Statutes, whiche bee alleadged alreadie for the holding of the Quarter Sessions, vntil the time of this Act of Queene Elizabeth, for that they haue heretofore so construed and taken the statute.

But to make the proofe full, they adde, that euen this same statute of repeale, 5. Eliz. cap. 4 doth in a certayne place thereof speake of the Quarter Sessions to be holden after Easter, whiche cannot be vnderstoode of anye other of those Statutes concerning the Sessions, but onelye of 2. H. 5. cap. 4. because the reste (that haue certaintie) doe appoynte that Session, eyther at the Annuntiation of the blessed Virgine, or in the seconde weeke of Lent. And likewise, that the Statutes 8. Eli. cap. 9 concerning the prices of vesselles, of Sope, Ale, and Beere: and 14. Elizab. cap. 5. and 18. Elizab. cap. 3 concerning poore people

and

and vagabonds, haue mention of the Quarter Sessions, to bée holden nexte after Easter. Whiche statutes, as they make not (in this poynt) any newe Lawe, but bée grounded vpon former Lawe, supposed to be in force: So, allowing of anye one of these foure Sessions. they doe therein giue allowance of all the other three also.

As for aunswere to the obiection of the nearenesse of the Michaelmas Sessions to the Michaelmas Terme, they saye, that this was foreseene to the makers of that statute, 2.H.5. who doe therein dispence with the absence of the Iustices of the Benches at *Westminst.* the Barons of the Eschequer &c. And yet, to the end, that they also mighte once in the yeare be present at a Session of the Peace (for the better direction of that seruice) the Statute 33.H.8.ca.10. did speciallye appoynt, that the Easter Sessions shoulde bée holden yerely vpon the Tewsday nexte after Lowe Sonday, in euery Shire of the Realme.

Now, if it shal séeme to any man a strange thing, that I moue question of the tyme of holding these Sessions: I lette him knowe, first, that it is one of the Articles of the Oath ministred to the Iustices of Peace, that they shall holde their Sessions after the forme of Statutes thereof made.

Second-

Secondlye, that the articles of manye ſtatutes, are inquirable, as it ſæmeth to mæ, onely at the Quarter Seſsions: becauſe they are not in the Commiſſion at all, and the ſtatutes themſelues doe appoynte of none other Inquirie, but at the Quarter Seſsions: and then if the Juſtices of Peace do not hold their Quarter Seſsions according to the tymes appoynted by Lawe, they be no Quarter but Speciall Seſsions, and conſequently, ſuche ſtatutes ſhall eyther not be enquired of at all, or elſe enquired of without warrãt, both which be very great inconueniences. So that this matter (if it be not rightly conceyued) tẽdeth both to the hurte of the conſcience, and to the hindrance of this ſeruice.

How long the Quarter *Seſſions* ſhall continue.

Touching the continuaunce of theſe quarter Seſsions, I haue ſhortly but this one thing to ſaye, that almoſt two hundred yeares ago, it was ordayned by Statute (12. R. 2. cap. 10.) that they ſhould bee continued three dayes togither (if neede were) vppon payne of punishmente: And yet in theſe dayes of oures, wherein the affayres of the Seſsions be exceedingly encreaſed (and conſequentlye, more nœde to continue them nowe, than before) many doe ſcantlye affoorde them three whole houres, beſides that time whiche is ſpente in giuing of the charge.

But

But it is more than time that I descend to some of those statutes, which doe specially relie vppon the Quarter Sessions, and therefore I will first begin with such as haue reference indifferently to any of them. Things referred to the Quarter *Sessions.*

The Iustices of Peace maye in their open Quarter Sessions, enquire of, heare, and determine, all offences (except treason, and misprision of treason) committed against the Acte made (23. El. ca. 1.) for reteyning the Queenes subiects in their due obedience. Pope.

They maye also in their open Quarter Sessions, enquire of such as doe extoll the vsurped auctoritie of the sea of *Rome*, agaynste the Statute 5. Eli. ca. 1. And the Clarke of the Peace must reade that Acte at euerye of the Quarter Sessions. Pope. Acte read.

And they may in their generall (or Quarter) Sessions, enquire of seditious wordes and rumours vttered againste the Queenes Maiestie, 23. E. cap. 2. Seditious words.

All the Articles, mentioned in the statute (33. H. 8. ca. 10.) shall be enquired of, and reformed by the Iustices of Peace in their auntient Quarter Sessions. 37. H. 8. cap. 7. Execution of Statutes.

They may in their generall Sessions determine of the offences of killing and selling Wainelinges vnder two yeares age, 24. Hen. 8. cap. 9: & 13. Eli. cap. 25: and of the offences Wainlinges.

of

Milch Kine,& Calues.

of not kæping Mylch Kine and Calues, 2.& 3.Phil.& Mar.cap.3: & 13.Elizab.cap.25.

Forſtalling.

The Enquirie, Hearing, and Determination of Foꝛeſtallings, Ingroſſings, and Regratinges, may be at the quarter Seſsions. 5.E.6.ca.14.

Alehouſe.

The Enquirie, whether Ale-houſe kæpers haue foꝛfeyted their Recognuſances, ought to be at the Quarter Seſsions, 5.E.6. cap.25.

Hunting.

The Fine foꝛ vnlawfull Hunting by nighte, oꝛ with paynted faces, ſhall bæ ſette at the nexte generall Seſsions, 1. Hen.7. cap.7.

Armour.

Iuſtices of the Peace, maye in theyꝛ Quarter Seſsions heare and determyne offences agaynſte the Statute of Armour, 4 & 5.Phil.& Mar. cap.2. and maye there enquire of, heare, and determine the offences of putting to paſture anye ſtoned

Horſes.

Hoꝛſes, &c. vnder the heighth appoynted by the Statute 32.Hen. 8. cap.13: And maye there alſo, enquire of conueying Hoꝛſes into *Scotlande*, 23.H.8.cap.16: 1.E.6.cap.5: & 1.Eli. cap.8.

Highwayes.

They maye at their like Seſsions, enquire of, and determine the offences of not amending the highwayes 2. & 3. Phil.& Mar.cap.8:5. Elizab.cap.13: & 18. Elizabeth. cap.

cap.9.

In their quarter and Generall Sessions, they ought to enquire of, heare, and determine the offences of not keeping continuall housholdes vppon the precinctes of the late Monasteries, 27.H.8.cap.5: 5.Elizab.cap.2: & 14.El.ca.11. Keepe housholdes.

And in their quarter Sessions, they maye heare and determine the offences of Informers 18 Elizab.cap.5. And at the like Sessions they may do the like for offendors in Periurie, 5.El.ca.9. Informers. Periurie.

Suche as be suspected of vsing counterfayte Tokens, or Letters, maye bee called by Processe to the nexte generall Sessions, and must be conuicted there, 33. Henri. 8. cap.1. Counterfeyt Tokens or Letters.

Iustices of the Peace maye in theyr open quarter Sessions, call before them the owner of a Wode, and twelue of the Commoners there, for setting out the fourth part thereof, 35.Henri.8.cap.17. & 13. Elizab. cap.25. Wood.

The proofe of the sufficiencie or insufficiencie of the cause, for whiche the Maysster may put away his Seruant, or the Seruante may depart from his Maister before the ende of the terme, shall be made at the Quarter Sessions, 5.Elizab.ca.4. Maister and Seruaunt.

The

Badgers. The licences for Badgers, Drouers, &c. are to be graunted in the open Quarter Seſſions, 5. Eliza. cap. 12.

Tranſport Corne. and the prohibition of tranſporting Corn, is to be made by the more part of the Iuſtices of Peace at their Quarter Seſſions, 13. Eli. ca. 13.

Poore. The licences that the poore of ſurcharged Cities, or Townes, may begge, are to be giuen at the generall Seſsions: and he that is grieued with anye taration made vppon him for the poore, may be eaſed there: and the taration for the relieſe of the priſoners in Gaoles ought to be made there alſo, 14. Eliz. cap. 5.

Priſoners.

Tauerne. The allignment of ſuch as ſhall kéepe any Tauerne to vtter Wine, ought by the Statute (7. E. 6. cap. 5.) to be made at the generall Seſsions.

Beggars childe. A Beggers childe may at the generall Seſſions, be bounde to ſerue anye ſubiecte of this Realme, being of honeſt calling, 14. Eli. cap. 5: & 18. El. cap. 3.

Purueiors. The Dockets of Purueyours oughte to be deliuered ouer to the Iuſtices of Peace at the next generall Seſsions, 2. & 3. Phil. & Ma. cap. 6.

Act read. The Acte of rebellious aſſemblies (or the effecte thereof) ought to be openly reade at euery Quarter Seſsions, 1. Mar. Parl. 1. ca. 12: & 1. Eliza.

1. Elizab. cap. 17.

And enquire of others, whether the Proclamation (set forth 4. H. 7. ca. 12.) be not yet to be reade at euerye Quarter Sellion alſo: for ſome doe thinke, that it was to endure for the time of that King only. Proclamation read.

Theſe and ſome others (whiche I omitte) haue reference (as you ſée) to anye of the ſame generall Seſsions: for ſo many of the which, as be inquirable (and oughte therefore to bée giuen in charge) I may ſeeme, eyther to haue committed a Tautologie in reporting them twice, or (which is woꝛſe) to haue written a Repugnancie, in that I didde firſte deliuer them as common to al Seſsions of the Peace, and doe nowe here reſtrayne them as proper to the generall. But this is ſhortlye the cauſe. The reaſon why ſome thinges be repeated.

Some men be of the opinion, that theſe ſtatuts which be inquirable (by expreſſe woꝛds) at the Quarter Seſsions only, may neuertheleſſe be enquired of at the ſpeciall Seſsions alſo. And I haue hitherto doubted, whether that be true in al caſes, or no: for, as the Iuſtices of Peace haue none other warrãt to enquire of theſe matters, but only by thoſe ſtatuts which do appoint ỹ enquiry to be made at the Quarter Seſsions: ſo (as me thinketh) they oughte to purſue that warrant, if they wil take vpon

them to enquire, and haue anye care to haue their doinges warranted. And I thinke it bee no great doubt, but that as the Statutes doe manye tymes giue degrees of power, sometimes in great measure, and sometimes in lesse: So also, the same Statutes maye restrayne the auctoritie of Enquirie to some certain Sessions, and specially to the quarter Sessions, in respecte that they be both more open, more commonly knowne before hande, and better furnished with Iustices, and consequentlye, the meter for administration of Iustice specially in affaires of the waightier sort. And therefore, I haue in this part laboured, both to satisfie their opinion in the one, and to serue mine owne phantasie in the other.

Easter Sessions. But now also, let vs loke out some suche thinges, as be left onely to the Easter, or Michaelmasse Sessions.

Prices of Vessels. The prices of vessels, for Sope, Ale, and Beere, shal be set & proclaimed by the Iustices of Peace, at their Quarter Sessions after Easter, 8. El. ca. 9.

Wages of Seruaunts. The wages of Seruantes and Labourers, are to be rated by ỹ Iustices of Peace at their Easter Sessions, or within fyre weekes after Easter, 5. Elizab. ca. 4.

Poore. And they must yearely in the same Sessi-

ons

ons examine the performaunce, or not performaunce of the statute made for the poore, 14. El. ca. 5.

They must also in the same generall Sessions yearelye, take order for the prouision of stockes and store, for the setting of youth, and ydle persons on worke: and ought then also to appoynt houses of correction for suche as will not worke, 18. El. ca. 3. Woorke and correction, for ydle persons.

At the Quarter Sessions to be holden after Michaelmasse, the Iustices of Peace are to appoint Searchers for Brasse and Pewter 19. H. 7. cap. 6. & 4. H. 8. cap. 7. Michaelmasse Sessions. Brasse, and Pewter.

And at the generall Sessions after Michaelmasse, two Iustices of the Peace ought to bee appoynted by the *Custos Rotulorum*, or (in his absence) by the eldest of the *Quorum*, for the ouersighte and controlmente of the Shirifes Books, &c. 11. H. 7. cap. 15. Shirifes Bookes.

In the number of particular Statutes, concerning the Quarter Sessions, these may haue place: Particular Statutes.

33 H. 6. ca. 7. For Attourneys in *Norfolke*.	*Norfolke.*
26. H 8. ca. 5. For passage ouer *Seuerne*.	*Seuerne.*
32. H. 8. ca 43. for Sessions in *Cheshire*.	*Cheshire.*
2. & 3. Phil. & Mar. of Woolles in *Halifax*.	*Halyfaxe.*
23. El. ca. 12. For pauing without *Alegate*.	*Algate.*

Of the speciall *Sessions* of the Peace.

CAP. XX.



THe speciall Sessions of the Peace, doe varie from the generall, in this chiefelye, that they bée holden at other tymes, when it shall please the Iustices themselues, or any two of them (the one being of the *Quorum*) to appoynt them. And this power they haue, not only by the Commission, where it sayth, *Ad certos dies, & loca, quos vos, seu aliqui vestrum, ad hoc prouideritis, &c.* but also by the Statute 2.H.5.cap.4. whiche alloweth thē to doe it More often (than the foure times) if need do so require.

They be also (for the most part) summoned for some speciall businesse, and not directed to the generall seruice of the Commission: And yet, there is no doubt, but that all the Articles within the Commission of the Peace, are both inquirable and determinable, at any speciall Session of the Peace.

M.

M.Fitzh. (as I haue alreadie noted) vſeth a thirde difference betwéene the generall and ſpecial Seſsions of the Peace: affirming, that whereas at the generall Seſsions, the Iuſtices of Peace ought of dutye to giue in charge, al matters (within the Commiſsion, or Statutes) that are to be determined before them: yet neuertheleſſe at the ſpeciall Seſsions they are at libertie to giue in charge eyther all, or any of them, as it ſhall ſéeme good vnto themſelues.

What thinges be inquirable, at the ſpeciall *Seſſions* of the Peace.

I will not gainſaye, but that the Iuſtices of Peace, maye at anye ſpeciall Seſsion of the Peace, giue in charge all ſuche Statutes as doe giue vnto them a generall power of enquirie, (withoute vſing mention of anye Seſsion) as doeth the Statute 25.Hen.8.cap.13 of Sheepe: yea, I will graunte, that they maye alſo at their ſpeciall Seſsions of the Peace, giue in charge to enquire vppon all ſuche other Statutes, as doe vſe the worde Seſsions indifferently, without adding Generall, or Speciall: of which ſort there be a greate many, as 5.E.6.cap.4 of fighting in Churche, or Churchyard: 14.H.8.cap.11: & 19.H.7 ca.11. of Hunting: 5.Elizab.cap.13: of linnen cloth: 2.& 3.Phil.& Mar.ca.7: of Fayres and Markets: 5.H.4.cap.3. of Seawatche: and 7.E.6. cap.5 of Wynes: and ſundry others. But,

whether they may there also enquire of such other statutes, as do only assigne the enquirie to be made at the Quarter Sessions, you haue heard my minde, and reade my reasons in the last Chapter.

The vse of the speciall Sessiõs.

Howsoeuer it bee, there might bee greate vse of the speciall Sessions of the Peace, if they were nowe and then holden (betweene the Quarter Sessions) to deliuer the Gaoles of vnruly seruauntes, sturdy vagabonds, ydle poore folkes, petite theeues, and some others. For it is dayly proued, that manye, beeing sent thither for correction, doe come forth more corrupted than they went in: whiche euill happeneth, by long abode there in wicked company: whereas, if they hadde more spedie trial, both they should be amended, and the Countrie lesse charged by it.

Forraine Realmes and Countries doe reape the fruite of spedie Iustice: and if oure Gaoles in *Englande* were more often sweepte and emptied, I doubt not, but that wee also shoulde finde a sensible profite to arise by it.

Peraduenture some man will saye, that by this meane we shall drawe vppon vs agayne, the same inconuenience of troubling the Countrie that happened by the fire wickes Sessions, which were therefore abrogated by the Statute, 37. H. 8. cap. 7. But that

that is not to be feared: for whereas those Sessions were to bee holden in euerye limite of the Shire, these may be kept onelye where the Gaole standeth: the whiche, (since it is commonlye scituate in a populous Towne) shall bee easilye able to furnishe this seruice without calling anye other vnto it.

Of the Rewardes and Punishmentes, due to *Iustices* of the Peace, in respect of their *Sessions.*

CAP. XXI.

WEl and euil doing, doe from the firste to the last deserue reward and punishment: and therefore, as we closed vppe the firste part of this Treatise wyth them: So also shall this latter Booke receiue the same ende and conclusion.

The Wages of the Iustice of the Peace at the Quarter Sessions.

Whilest it was at the libertie of the Iustices of Peace, to holde their Quarter Sessions as shorte time as they woulde, the Lawe didde not allowe them any Wages for theyr paynes. But when the Statute (12.R.2.cap. 10.) hadde bounde them (vnder payn of punishemente) to continue their Sessions three dayes togither (if the affayres of their office did so require) then the same statute thoughte it méete also, to allow to euerye of them foure shillinges by the daye for the time of theyr Session, to be payde by the handes of the Shirife, out of the Fines and Amerciamentes rising of the same Sessions: And that the Lords of Franchises, shoulde bée contributories to those Wages, after the proportion of their partes of the sayde Fines and Amerciaments.

But, because it was verye Dilatorie for the Iustices of Peace, to take those Wages, at the handes of the Shirife (as I haue alreadie touched) vppon the Estreate sente oute of the Eschequer: and for that also it grewe in question, whether such Lordes, as were named in the Commissions of the Peace, shoulde bée partakers of the same Wages: the Statute (14.Ric.2. cap. 11.) did plainelye prouide, that the Wages of these Iustices shoulde bée leuied and payed by the Shirife, vpon

vpon Eſtreates doubled and indented bée-twæne the Shirife and them: And that no Duke, Earle, Baron, or Baronet (albeit they were Iuſtices of the Peace, and did hold their Seſsions with the other eight Iuſtices) ſhould take anye Wages for their Office in this behalfe.

And hereof alſo M. Mar. collecteth, that howſoeuer manye Commiſsioners of the Peace there ſhall be aſſembled at theſe Seſsions, yet only eighte of them ſhall receiue the wages: becauſe (ſayth he) that at ſuche time as theſe wages were firſt appoynted the law did take knowledge & make allowance only of eyghte Iuſtices, and no more. And he alſo maketh it doubtfull, whether it lie not in the power of the Barons of ỹ Eſchequer, to appoint which eight (when moe be aſſembled at the Seſsiõs) ſhall haue the wages payde them.

For the firſt poynt, it would be ſomwhat harde (in déede) to ſtraine that Statute ſo far, as to giue wages thereby to ſo many Iuſtices as be nowe at theſe dayes in euerye Shire, and would be preſent at the Seſſiõs. Yet the ſtatute of Labourers, 5. El. ca. 4. that willeth the Iuſtices of Peace in euerye ſhire to deuide themſelues, and to kéepe two ſpeciall ſittings yerely for the execution of that Lawe, alloweth to as manye of them as ſhall giue

their attendance fiue shillings a day for three dayes together. But concerning the latter, it seemeth by the latter Statute it selfe, that the Shirife shall first pay the wages, and then the Barons shall make the allowance, according to the Indenture: So that I see no libertie of such nomination left vnto the Barons.

I confesse, that it might breede, both offence against the Shrif, and iealousie among the Iustices themselues, to haue one of them preferred before an other in this payment: and therefore I thinke it wisely done (as it is vsed) to bestow the whole alowance vppon the defraying of their Commune diet.

If the Fines and Amercements of the same Sessions (sayth M. Marr.) will not fully amount to the sum of the wages then due to the Iustices, yet shal ỹ wages be ratably paid out of them, so farre as they will extend.

Furthermore those two Iustices of ỹ peace, that do in their Sessions call before them, any person suspected to offend the statute of Deerhayes, Buckstals, and Stalking, and doe examine him therupon and find him faulty therein, shall haue the tenth part of the forfeyture growing thereby. 19. H. 7. ca. 11.

Buckstals.

Hitherto of Reward, henceforth of punishment. It seemeth, by ỹ opinion of some Iustices (2. R. 3. 10.) that if a Iustice of the Peace doe any

Punishment at the commune lawe.

any thing of Record ignorauntly, & for want of knowledge, that he shall not bee punished for it. And this opinion of theirs is not newe in this Realm, although it be otherwise truely sayd, *Imperitia quoq; culpæ adnumeratur*: for you may reade in the old lawes, of King Edgar (*cap.*3.) and of King Canute (*ca.*14.) that if a Iudge had erred in his office, he might then haue excused himselfe, by oath, That hee did it not of euill mynde, and that he knew not how to do better: which I speake not, to comfort men in careleſſe ignorance, but to shew you that men may erre and that erring by infirmitie they are not altogither vnworthie of pardon: and withall to let the Iustices of Peace see, that it may be a fault to erre by ignorance, and that therefore they ought to stay, where they meete with *nõ liquet*, as their owne Commission doth direct them.

Now, on the other side, if a Iustice of the Peace will craftily embesill an Enditemẽt, or wilfully raze any part thereof, or malitiously enroll (or file) that for an Enditemẽt which was neuer found by ỹ Iurie. Then (by ỹ resolution of al ỹ Iustices assẽbled before the King in the Starre Chãber, 2.R.3.) a Cõmissiõ may go out to enquire (by the oathes of 12. men) of suche his misdemeanor, and if hee bee conuicted therof, he deserueth to lose his Office,

fice, & to make fine to the Quéen according to the quantitie of his misprision & offence, *ibid. Fo.*10. And euen so maye he be punished (as this Booke leadeth me to thinke) if hée alter an Enditement of Trespas, into an Enditement of Felonie, howsoeuer the opinyon (27 lib. Ass. Pl. 18.) be found against it.

A Iustice of the Peace may also be endited, of ỹ vnlawfull taking of money for doing his office, or of such other falsitie, Fitz. Nat. Br. 243. And if he cause a man to be endited at the Sessions, by former conspiracie, or indirecte practise, he is punishable for it, as a priuate man 21. E. 4. 67.

But if (in the handling of a cause at the open Sessions) it happen him to speake against an offendor, somewhat excessiuelye, yet he shall not be punished for it: *Iuris enim executio, non habet iniuriam:* Neuertheless, Iudges ought not to abuse their tongs by intẽperance, but they must rather take great héede (as Cicero, pro Font. sayd) *Quibus verbis vtantur, ne quid minus moderate positum, ne quid ab aliqua cupiditate prolapsum verbum, esse videatur.*

Punishments by Statutes.

Thus farre of punishments by ỹ commune Law, now to those by Statutes.

Alehouse. *Fine Markes.*

If the Iustices of Peace, hauing taken a Recognusance for an Alehouse, doe not certifie it at the nexte quarter Sessions of the Peace, they

they shall lose fiue markes, 5. E. 6. ca. 25.

That nexte Iustice of ỹ Peace, whiche doth not certifie at the next generall Sessions of the Peace, such presentments as the ouerseers of the Highwayes haue before presented vnto him, shall lose v. *lb.* for euery default, 2. & 3. Phil. & Mar. ca. 8: & 5. El. ca. 13. High wayes. *Fiue pounds.*

If any Iustice of the Peace (not being sick, nor hauing other lawfull excuse, to be testified vnder the Oath of one assessed in the Subsidie booke at v. *lb.* &c.) do not assemble at the Easter Sessions, to rate the wages of seruãts, &c. he shal lose x. *lb.* to the Queene. 5. El. cap. 4. Seruaunts Wages. *Ten pounds.*

And if any Iustice of the Peace (so assẽbled) shal depart thẽce, before conferẽce had aboute the execution of this Acte for setting idle persons on worke, he shal forfeit v. *lb.* 18. El. ca. 3. Poore on woorke. *Fiue pounds.*

The Iustice of ỹ Peace which fayleth to record (at ỹ next quarter Sessions) the name of any persõ (auctorised to shoote in a Gun) that hath presented his name vnto him, shall lose xx. *s.* 2. E. 6. ca. 14. If that Statute do so far extend, whereof the words giue cause of doubt. Gunnes. *Twentie shillinges.*

And if the Proclamation (annexed to the Statute 4. H. 7.) ought now to be read, then if it be not read at each quarter Sessions, euerie Iustice of the Peace there presente, shall lose xx. *s.* 4. H. 7. ca. 12. Proclamation reade. *Twentie shillinges.*

If the Iustices of the Peace, before whom any Pope.

any presentment shal be made, at their quarter Sessions, against any person for extolling the auctoritie of the See of Rome, doe not certifie the same into the Kinges Benche within 40. dayes after, if the Tearme be then open, and if not, then at the first day of the nexte ful Tearme, they shall euery of them lose C. *li.* for euery default, 5. El. ca. 1.

A hundreth pounds.

Examinations. *Fortie shillinges.*

And those Iustices of the Peace, which doe not certifie into the Escheaquer, their examinations taken concerning the entring of plaintes by the Shirifes, shall lose xl. *s.* 11. H. 7. ca. 15.

THE EPILOGVE.

The Epilogue.

THus haue I (by ỳ fauor of God) brought this treatise to an ende: wherein if many things haue escaped me vnséene, I doe not greatly meruayle, when I loke backe and behold the varietie & multitude of the matter that I haue passed thorough: and it shall not be hard for him that méeteth with suche Estrayes, to take and lodge them in their right Titles here.

Agayne, if I shall be thoughte to haue heaped vp to manye conceites (borrowed out of M. Marrowes reading) I make aunswere, that I haue omitted manye, and haue made the

the beſt choice that I could.

If furthermore, I ſhal ſéeme to thoſe that be maiſters in Arte & Methode, not to haue throughly obſerued their rules, and ſpecially that κατ' αὐτό, bicauſe I doe many times mingle *aliena*, thinges not preciſelye pertayning to my matter in hand, To them I ſay, that it is the receiued maner of teaching in our law, To ſhew thinges by their contraries and differents: and ſeeing that great light commeth to the matter thereby, I maye neyther condemne it as vnapt, nor reiecte it as vnſeruiceable.

Moreouer, if I haue bene deceiued in laying downe ouerboldly mine owne opinion, I will no leſſe gladly be admoniſhed of it, than readily reforme my miſtakings.

Finallye, whatſoeuer other thing is done amiſſe, I proteſt that it hath eſcaped of vnſkill, and not procéeded of wilfulneſſe, and therefore I deſire that I may be allowed the benefite of that Pardon, whiche (as I tolde you euen now) is in like caſe grauntable to a Iuſtice of the Peace.

FINIS.

A Table, conteining (verie neare) all the imprinted Statutes, both *generall and particular, wherewith Iustices of the Peace haue in any sorte to deale.*

King.	*Yeare.*	*Chap.*	*Content.*
He. the 3.	9	25	Of measures and weights.
			Thassise of Bread and Ale.
			The Iudgemēt of the pillory.
	51		The ordinaunce for measuring
			Of weights and measures.
Ed. the 1.	3	9	Of fresh suite after Felons.
		10	Of Coroners.
		15	Of Bailement of Felons.
		25	Against maintenance.
		26	That Shirifes and other Ministers shall take no rewardes.
		27	Of fees for deliuering chapiters.
		28	Of Maintenance of quarrels.
	13	34	Of rauishing women.
		47	Of taking Salmons.
		49	Against maintenance.
			The Statute of *Winchester*,
	28	11	Against maintenance.
	34		For measuring of land.
			Definition of Champartors.
Ed. the 2.	1		For breaking Prisons.
	18		For Purueiours
			For Estreats of the Excheaquer.
Ed. the 3.	1	14	For maintenance of quarels.

King.	Yeare.	Chap.	Content.
		16	For keeping of the Peace.
		17	Enditements before Shirifes to be taken by Indenture.
	2	3	For comming before the Kings Iuſtices with force and armes.
		6	A confirmation of the Statute of *Winchester*.
	4	2	Of Wardeins of the Peace.
		4	That Purueyours pay in hande, and haue a warrant vnder the great or ſmall Seale.
		10	Againſt Shirifes & Gaolers that will not receiue theeues, and ſuch other into their Gaoles.
	5	2	Againſt the Kings Purueiours.
		10	Iurours that take money ſhall no more paſſe vpon Iuries.
		11	That Iuſtices aſsigned to determine felonies haue power to write to forrein Countries.
		14	Againſt Robertſmen and drawlatches.
	14	10	Gaoles of the Counties to bee annexed to the Shirifes.
	18.St.2.	2	Iuſtices of Peace made.
	20	4.& 5.	For mainteining of quarrels.
	23	6	For Vitailers.
	25	1	For Purueyours.
	25.St.4.	3	For foreſtalling of Wines.
	25.St.5.	9	Auncell weight taken away.
		10	For weight and meaſuring.
		15	For takers of Sheepe.
	27.St.2.	4	None going to the Staple be diſturbed by the Kings takers.
		10	For waights of the Staple.
	28	11	For ſafegard of Marchants aliens cõming within this Realme.

King.	*Yeare.*	*Chap.*	*Content.*
	34	1	For Iuſtices of Peace.
		2	For Purueyours.
		5.&6.	Iuſtices of Peace to enquire of meaſures.
		22	For Hawes found.
	36	2.3.4.5.6	Againſt Purueyours.
		12	For the Seſsions of the Peace,
	37	19	For finding of Hawkes.
	42	9	For leuying of the greene waxe.
Ric. the 2.	1	3	All Statutes of Purueiours confirmed.
		4	For maintenance of quarrels.
		7	For giuing of Liueries.
	2	2	For foreſtalling of Wines.
	5	7	For entring into lands.
	7	8	For Purueyours.
		13	For riding in Harneſſe.
	12	3	A confirmation of all Statutes for Vitailers.
		6	For bearing weapons.
		10	Iuſtices of Peace to puniſh Vagabounds, and for holding their Seſsions.
	13	4	Clarke of the Market.
		7	Iuſtices of Peace be made a new.
		8	For price of vitaile.
		9	For weights.
		13	For Hunters.
		19	For ſafegard of Fiſhe.
	14	11	For aſsigning of Iuſtices of Peace.
	15	2	For forcible entries.
		4	For meaſuring Corne.
	16	3	The Clarke of the Market to haue readie his weightes according to the Standard.

King.	Yeare.	Chap.	Content.
		4	For liueries of companies.
	17	8	For Riots & vnlawfull aſsẽblies.
		9	That Iuſtices of the Peace ſhall be conſeruatours of the Statutes made for Riuers.
		10	Two men of Lawe to bee aſsigned in the Commiſsion of the Peace to deliuer Gaoles.
	20	1	For riding armed in the Realme.
		2	For wearing of Liueries.
He. the 4.	1	7	For giuing of Liueries
		11	For extortion by Shirifes.
	2	14	For Purueyours.
		21	For giuing of Liueries.
	4	25	For Hoſtelers and Vitailers.
	5	3	For watche vpon the Sea coaſts.
		4	Multiplication made Felonie.
		5	For cutting tongues, and putting out of eyes.
		10	Iuſtices of Peace to impriſon men in the common Gaole.
	7	3	Of the manner of making out Eſtreates.
		7	For Arrowheads.
		14	For giuing of Liueries.
	13	7	Of Riots and Routes.
He. the 5.	1	10	For weights and meaſures of Corne.
	2	4	Of the Seſsions of the Peace.
		8	For reformation of Riots and Routes.
			Proceſſe againſt Riotours that flee into woodes
	Stat. 2.	1	Of Iuſtices of Peace.
	3	7	For clipping, waſhing, and filing of

King.	Yeare.	Chap.	Content.
			of money.
	8	3	For guilting and filuering.
	9. St. 2.	8	Of falſe Weights.
	2	11	For the meaſure of Wines.
He. the 6.		14	For Goldſmithes ſelling worke of ſiluer.
	8	4	For giuing of Liueries.
		5	For weights.
		9	For forcible entries.
		10	For proceſſe in Enditementes & Appeales.
		14	For Felons and Murderers, that void themſelues into woods.
	11	6	For Commiſsions of Peace.
		8	For weights and meaſures.
		12	For Waxechaundlors.
	14	4	For Seſsions in *Midleſex*.
	18	11	A Iuſtice of Peace to haue twẽtie pound land.
		19	For Souldiours departing with out licence.
	20	8	For reſiſtance of Purueyours.
	23	1. & 2.	Againſt Purueyours.
		10	For extortion of Shirifes.
		11	For leuying Knightes wages for the Parliament.
		13	Proclayming the Statutes for vitailers.
	31	3	Of attachments in the Courtes of the Marches.
	33	2	A repeale of an act for Outlagaries in *Lancaſter*.
		7	For Attornies in *Norff.* & *Suff.*
Ed. the 4.	1	2	For Enditemẽts & Preſentmẽts in Shirifes Turnes and Leets.

King.	Yeare.	Chap.	Content.
	8	2	For Liueries of companies.
	12	2	For Bowſtaues.
		9	For Eſcheatours.
	17	4	For making of Tile.
Ric.the3.	1	3	For Enquirie of eſcapes: for letting of ſuſpects of Felonie to Bayle.
		11	For Bowſtaues.
		12	For the meaſure of wine & oile.
He.the 7.	1	7	Againſt Hunters.
	3	1	Giuing of Liueries: & certifying of *Recognuſance* coroners.
		2	Taking Maydens, Widowes, or Wiues againſt their willes, made Felonie.
	7	4	For Weights and Meaſures.
	11	4	One Weight and Meaſure to be vſed thorow the Realme.
		9	For the inhabitants of North & South *Tindale*.
		15	Againſt vntrue demeaning of Shirifes and their Officers in holding their Counties.
		17	Againſt deſtroying of Pheſants and Partriches with vnlawfull Engines, and for Hawkes.
	12	5	For Weights and Meaſures.
	19	6	For Pewterers and Braſiers.
		11	For keeping of Deerehayes and Buckſtalles.
		13	For puniſhment of Riots.
He.the 8.	1	7	Concerning the office of Coroners
	3	12	For reformation of Impanels for the King.

For

	4	7	For Pewterers, and true waights and beames.
	6	6	For remitting Priſoners to the place where the crime was committed.
	14.15	6	For High wayes in the Wealde of *Kent*.
		10	For Hunting the Hart.
	21	5	Fees for Teſtaments, and letters of Adminiſtration.
		7	Againſt ſeruauntes imbeſeling their Maiſters goods.
	22	5	For repairing of bridges in high wayes.
		10	Concerning *Egiptians*.
		11	For Powdike in Marſhland.
		14	How perſons committing petie Treaſon ſhall abiure.
	23	2	Where and after what maner the Gaoles within England ſhall be made.
		4	That no Brewers make veſſells, and the contents of barrels.
		16	That no Horſes be conueyed into *Scotland* without licence.
	24	4	For ſowing of Flaxe & Hempe.
		7	Againſt killing of Calues.
		9	Againſt killing of Weinlings.
		10	For Crowe nettes.
		13	For exceſſe in apparell.
	25	6	For puniſhment of Buggerie.
		11	To auoid deſtruct. of wildfoule.
		13	What Sheepe a man may keepe.
	26	5	For not conueying any perſons goods or Cattells ouer the water of *Seuerne*, after Sunne ſet, vntill Sunne riſing.

King.	Yeare.	Chap.	Content.
		6	For *Wales*
		7	For amending highe wayes in *Suſſex.*
	27	5	Iuſtices of Peace in *Cheſter.*
		16	For inrolment of deedes.
		20	An order for Tithes.
		24	For recontinuing of certaine liberties taken frō the Crowne.
	32	3	Of Abiuration.
		7	For true payment of Tithes and offerings.
		9	Againſt maintenaunce, &c. vnlawfull buying of Titles.
		13	For breede of Horſes of higher ſtature.
		41	For baking of Horſe bread.
		43	Seſsions in *Cheſter.*
	33	1	Concerning counterfait letters or tokens.
		5	For keeping of great Horſes.
		6	For Croſſebowes & Handguns.
		9	For maintenance of Artillerie, and debarring of vnlawefull games.
		10	For the execution of certaine Statutes.
		17	For confirmation and continuance of certaine Actes.
	34 35		For *Wales.*
		14	For certificate of conuicts to be made into the Kings bench.
	35	11	For paiment of Knights & Burgeſſes wages of the Parliament in *Wales.*
		17	For preſeruation of woods.
	37	1	Of the *Cuſtos Rotulorum*, and Clearks of the Peace.

For

King.	Yeare.	Chap.	Content.
		7	For abrogation of ſixe weekes Seſsions.
		8	That Enditements lacking *vi & armis* ſhall be good enough.
		9	Againſt vſurie.
Ed. the 6.	1	1	Againſt ſuch as ſpeake againſt the Sacrament of the bodie and bloud of Ieſus Chriſt, & for the receipt therof in both kindes.
		5	That no Horſes bee conueyed out of Englande without licence.
		7	For cõtinuance of proceſſe notwithſtanding newe commiſſion of the Peace.
		12	Of poyſoning.
	2.3	2	For true ſeruice in Capitaines and Souldiours.
		14	Againſt ſhooting of haileſhot.
		15	For vitailers and handycraftes men.
		24	For triall of murders in ſeuerall Counties
	3.4	1	Of the *Cuſtos Rotulorum.*
		2	For true making of Woollen clothes.
		21	Of retayling Butter & Cheeſe.
	5.6.	4	Againſt fighting & quarrelling in Churches.
		6	For true making of Woollen clothe.
		14	Againſt regrators, foreſtallers, and engroſſers.
		15	Againſt regrators of tanned leather.

King.	Yeare.	Chap.	Content.
		24	For making of Hattes at *Norwich* and in *Norfolke*.
		25	That Alehouſekeepers be boũd by *Recognuſance*.
	7.	5	To auoid great prices of Wines.
		7	For the aſsiſe of Fuell.
Marie.	1	8	That Shirifs ſhal not be Iuſtices of Peace during their Office.
		9	For the incorporation of Phiſitions in *London*.
		12	Againſt vnlawfull aſſemblies.
Ph. & Ma.	1.2.	2	For reformation of exceſſe in apparell.
		4	For puniſhment of *Egiptians*.
		5	For reſtraint of Corne &c. ouer the Sea.
		13	An order for baylement of priſoners.
	2.3	3	For keeping of milche Kyne & rearing of Calues.
		6	Againſt exceſsiue taking of Purueyours.
		7	For buying of ſtolen Horſes.
		8	For amending of high wayes.
		10	For examinatiõ of priſoners ſuſpected of mãſlaughter or Fel.
		13	For Woolles in *Halyfaxe*.
		15	That Purueyours ſhall not take vittaile within fiue miles of *Cambridge*, or *Oxeford*.
		16	For watermen vpon *Thames*.
		18	For commiſsions of Peace, and Gaole deliuerie in Townes corporate not being coũties.
		19	For Powdike in Marſhland.

For

King.	Yeare.	Chap.	Content.
	4. 5	2	For hauing Horſe, Armour, & Weapon.
		3	For taking of Muſters.
Elizab.	1	1	For reſtoaring to the Crowne the auncient Iuriſdiction.
		2	For vniformitie of Prayer, and adminiſtration of the Sacraments.
		7	For cõueying horſes into *Scotlãd*
		12	Againſt deceipfull vſing of linnen cloth.
		16	Againſt rebellious aſſemblies.
		17	For preſeruation of ſpawne and frye of Fiſh.
		18	For cõtinuance of certaine Stat.
	5	1	For the aſſurãce of the Queenes power ouer all eſtates.
		2	For maintenance and increaſe of tillage.
		4	Orders for artificers ſeruauntes, and labourers.
		5	For maintainance of the Nauie.
		8	For Shoemakers &c. vſing currying of Leather.
		9	For puniſhment of Periurie.
		10	For ſeruaunts embeſeling their Maiſters goods.
		12	For Badgers of corne, and Drouers of cattell to be licenced.
		13	For amending of high wayes.
		15	Againſt fonde and Phantaſtical Propheſies.
		16	Againſt Coniurations.
		17	For puniſhment of Buggerie.
		19	For repeale of a Stat. for cõueying Horſe out of the Realme.

For

	20	For puniſhment of Vagabounds faining themſelues *Egyptians*.
	21	For puniſhment of vnlawful taking of fiſhe.
	24	For repairing of Gaoles.
8	3	Againſt carying of Sheepe ouer the Sea aliue.
	8	For repeale of a braunche of a Statute for the ſtature of horſes in the Ile of *Ely*.
	9	For repeale of a braunche of a Statute for the prices of barrels and kilderkins.
	10	For Bowyers and the price of Bowes.
13	2	For bringing in, and putting in execution Bulles from *Rome*.
	8	Againſt vſurie.
	9	For Commiſsion for Sewers.
	11	For maintenance of Nauigatiõ.
	13	For increaſe of Tillage.
	14	For bringing Boweſtaues into the Realme.
	19	For making of Cappes.
	21	That Purueyours maye take corne and vitaile within fiue miles of *Cambridge* & *Oxford*, in certaine caſes.
	23	For pauing a ſtreete without Algate.
	25	For cõtinuance of certaine Statutes.
14	1	For ſuch as rebelliouſly deteine any of the Queenes Caſtels.
	2	Againſt ſuch as practiſe the enlargement of any priſoner cõmitted for high Treaſon.

For

King.	Yeare.	Chap.	Content.
		5	For punishment of Vagabondes and reliefe of the poore.
		11	For continuation, explanation, &c. of diuers Statutes.
	18	1	Againſte diminiſhinge of the Queenes coyne, and other coynes currant within the Realme.
		3	For ſetting poore people on worke.
		5	To redreſſe diſorders in commõ Informers vpon penall lawes.
		7	For taking away Cleargie from the offendors in Rape & Burglarie, and an order for deliuering Clearks cõuict without purgation.
		9	For mending Highwayes.
		18	For repayring of *Chepſtowe* bridge.
		20	For repayring Bridges & highwayes neare *Oxford*.
	23	1	For due obedience to the Queene.
		2	Againſt ſeditious wordes, or rumors.
		9	Againſt logwood, or blocwood.
		10	For Pheſantes and Partriches.
		11	For *Cardiffe* bridge.
		12	For pauing without Algate.



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